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ABSTRACT

In this report of a congressional hearing, testimony includes statements and prepared statements of these four senators: John Breaux, Larry Craig, Debbie Stabenow, and Herbert Kohl. Panel I is presented by the Acting Assistant Attorney General, United States (U.S.) Department of Justice. Panel II consists of individuals representing the National Center on Elder Abuse, National Association of State Units on Aging; a victim of elder abuse; Director of Geriatrics, University of California, Irvine, California; Elder Abuse Prosecution Unit, San Diego, California; and the National Association of Adult Protective Services Administrators. Appendixes include a statement by the National Indian Council on Aging; testimony by the Social Services Block Grant Coalition; and a letter from the American Bar Association and its recommended guidelines for state courts handling cases involving elder abuse. (YLB)

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ED 468 452

SAVING OUR SENIORS: PREVENTING ELDER ABUSE, NEGLECT, AND EXPLOITATION

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

WASHINGTON, DC

JUNE 14, 2001

Serial No. 107–8

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SAVING OUR SENIORS: PREVENTING ELDER ABUSE, NEGLECT, AND EXPLOITATION

THURSDAY, JUNE 14, 2001

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.

The committee met, pursuant to notice, at 9:34 a.m., in room SD–562, Dirksen Senate Office Building, Hon. John B. Breaux (chairman of the committee) presiding.

Present: Senators Breaux, Kohl, Stabenow, Craig, and Burns.

OPENING STATEMENT OF SENATOR JOHN B. BREAUX, CHAIRMAN

The CHAIRMAN. The Committee on Aging will please come to order.

As my first act in this position with the gavel, I want to thank Senator Craig for his great leadership. There has never been a committee that has worked in such a bipartisan fashion, because there are no Democratic or Republican positions on Aging; it is the committee. We have had that type of relationship and will continue that type of relationship in the future so that we can go about the business of paying attention to the subject matter with which this committee is charged, and that is the condition of our Nation's senior citizens.

Today's hearing is entitled, "Saving our Seniors: Preventing Elder Abuse, Neglect, and Exploitation." I think it clearly reflects the charge of this committee to improve the quality of life of all of our older Americans.

We all recognize that the quality of life is not just how long we live, but also how well we live in our later years, and we truly understand, I think, that the quality of life depends on, among other things, access to affordable transportation and housing and nutrition and appropriate health care services. But we also know that improving the quality of life of our seniors also means that we cannot allow conditions to exist that compromise the health and safety of our Nation's seniors, and to make sure we do everything we can to eliminate the potential for abuse of our Nation's seniors.

During a recent hearing, this committee heard testimony indicating that an astounding 95 percent of all long-term care in this country is not provided by institutions or professional caregivers but by family members in the home. That is good news, and it is also bad news in the sense of the burden that it puts on families who are charged with caring for their senior family members.

Many times, these families do not have adequate training, do not have adequate financial wherewithal, do not have the means to handle the extra burdens that are put on their families as they attempt to care for their loved ones.

In many cases, family caregivers are so overwhelmed by the extra duties that they themselves have difficulties and problems, and sometimes their problems affect the seniors that they are charged with taking care of. Often, these problems go unnoticed and unreported, and therefore unsolved.

Victims of abuse, neglect, and exploitation are often unable to speak for themselves. Therefore, it is important that those of us in Government who have access to the means to make sure that these problems do not go undetected are aware of the seriousness of these problems.

I want to also point out that this hearing reflects the good work of Senator Craig in putting it together in his former capacity as chair of the committee. The entire hearing today was structured by him and his staff, and we credit them and recognize them for that accomplishment and continue to look forward to the good working relationship that we have.

I recognize Senator Craig now for any comments that he might have.

[The prepared statement of Senator Breaux follows:]

PREPARED STATEMENT OF SENATOR JOHN BREAUX

As my first official act as Chairman of the Senate Special Committee on Aging, I would like to thank Senator Craig for his leadership of the committee during the past several months and to express my sincere appreciation for the bipartisan way in which he has guided the committee's work. The issues that affect our older citizens are truly issues on which we find common ground and I am certain that we will continue to go forward in the same spirit of bipartisanship that has become synonymous with the Special Committee on Aging.

I would also like to thank Senator Craig and his staff for their initiative in putting this hearing on our agenda and for their hard work in preparing for the hearing. While I have the good fortune today to be presiding as Chairman, much of the credit for bringing this important issue to the attention of the Senate and the nation should go to Senator Craig.

Today's hearing, "Saving our Seniors: Preventing Elder Abuse, Neglect and Exploitation," clearly reflects this committee's goal of improving the quality of life of older Americans. We recognize that quality of life is just as important—if not more so—as length of life and we truly understand that one's quality of life depends, among other things, on access to affordable transportation and housing, adequate nutrition and appropriate health care services. But we also know that improving the quality of life of our seniors includes eliminating those conditions that may compromise their safety or endanger their lives. That issue is the focus of our hearing today.

During a recent hearing this committee heard testimony indicating that an astounding 95 percent of all long term care is provided informally by family members or community-based caregivers—a fact that is both good news and bad news. On a positive note, most of our seniors are cared for in their homes and community-based settings. With that care however, we shift most of the physical, emotional and financial burdens to families who may not have adequate resources to provide that care or to strangers who may not have substantial interest in providing quality assistance. In some cases, family caregivers become overwhelmed by these circumstances and neglect or unintended abuse may occur. Other cases may involve individuals who purposely target seniors for acts of intentional abuse or exploitation. Far too often, these problems go unnoticed and unreported. The victims of abuse, neglect or exploitation are often unable to speak on their own behalf or may have no alternative sources of care. The purpose of today's hearing is to bring awareness and credibility to this problem and to give the members of this committee an opportunity

to hear victims of elder abuse and their advocates speak about the causes of these problems and possible means for alleviating this abuse.

STATEMENT OF SENATOR LARRY E. CRAIG

Senator CRAIG. Mr. Chairman, thank you very much.

I want the record to show that I appreciate the flexibility and the cooperative effort with which John and I have worked on the whole effort of keeping this very important committee on track.

John is right—this hearing was well underway when the transition occurred, and thanks to him and his staff, they picked it up and worked with us to continue it and to shape it, because we think it is so important that this aspect of the whole universe of senior care and senior life be recognized.

I want to thank our witnesses for being here this morning, and a very special thanks to Joanne Hopper of Fruitland, ID. If you understand Idaho, you would say, "Oh, that is just down the road from Payette," and Payette is my home town. So we do appreciate Joanne being here, and I want to thank her for her courage and her willingness to come to Washington to share her story with us.

Today we will shed light on an insidious aspect of elder abuse that remains largely hidden below the surface of public awareness—the abuses that tragically occur in non-institutional settings, including the elder's own home.

The physical and emotional consequences of elder abuse can be devastating. There is ample evidence indicating that abuse shortens lives and can even end the life of a vulnerable victim. Because we are serious in our commitment to promote secure independent living for our seniors, we must address this difficult issue. No one should live in fear of being abused or mistreated—no one—not a child, and not a senior.

It is important to emphasize that these cases are not just isolated incidents. National statistics indicate that 470,000 cases of elder abuse were reported to authorities nationwide in the year 2000. Over 2,100 of those cases were reported in my home State of Idaho the same year. Perhaps more disturbing is the fact that these statistics represent maybe one in five cases reported to State and local officials.

These challenges facing us in fighting elderly abuse are formidable. Our investigations have revealed that State efforts to address these situations are often ineffective. The perpetrators are seldom prosecuted and front-line responders often lack the training needed to adequately address the problem. Various Government agencies all too often fail to work in a collaborative and focused manner.

Today we seek to determine how existing State and Federal efforts might be enhanced to promote a more collaborative and multidisciplinary approach for resolving some of these complex cases.

Existing Federal resources can and should be targeted toward providing more technical training and assistance in the collaborative identification, investigation, and prosecution of crimes perpetrated against the elderly.

The DOJ recently awarded the State of Idaho a Stop Violence Against Women Grant. I would like to see a similar opportunity for States to apply for grants specifically related to elder abuse prevention.

John, thank you again for convening the hearing. This issue has been ignored for far too long by everyone, and I hope that today we can begin to shed light on and maybe begin to help shape existing resources at the Federal, State and local levels to step forward in the stopping of this form of abuse.

Thank you.

The CHAIRMAN. Thank you, Senator Craig.

Are there any other comments from committee members? [No response.]

If not, we would like to welcome our first witness, the Acting Assistant Attorney General, since I think almost everyone over there is in an acting capacity except the Attorney General.

Mr. Stuart Schiffer will talk about the Justice Department's role in elderly abuse and prevention and prosecution.

Mr. Schiffer, thank you for being with us.

STATEMENT OF STUART E. SCHIFFER, ACTING ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. SCHIFFER. Thank you, Mr. Chairman. Good morning, Senator Craig, members of the committee.

I very much appreciate the opportunity to be here today. With the chair's permission, I will submit my prepared statement for the record and simply make a few general observations and then take any questions.

The CHAIRMAN. Without objection.

Mr. SCHIFFER. We continue to be grateful for the leadership role which this committee has consistently had in dealing with issues of elder abuse and victimization. These issues certainly are not new; they are, however, being brought into ever sharper focus, and they need to be brought into ever sharper focus by population changes and other factors.

As the committee knows, these demographic shifts are startling. It is estimated that the number of American citizens over age 65 is going to more than double from the present number of approximately 34 million to 70 million in 30 years.

None of the issues that we deal with is new. We all confront these issues not simply as public officials, but in our own family and personal lives. Elder abuse and elder justice issues can take many forms, and not surprisingly, those citizens who are most vulnerable to physical and psychological abuse are equally vulnerable to financial exploitation and many other areas that we have to deal with.

At present and in the future, the real leadership in dealing with these issues will continue to come at the State and local levels. At the same time, as I attempted to outline in my written statement, we in the Federal Government have a variety of tools available to us, such as civil enforcement and criminal statutes and financial assistance in the form of formula and discretionary grants of the type Senator Craig referred to.

We have found that as we continue to enhance our own coordination within the Department and with other Federal agencies, principally the Department of Health and Human Services but others as well, in applying our resources, we equally increase our ability

to provide training and guidance to State and local governmental entities and to the host of private social service and related entities, many of which are represented here, such as AARP, for example, whose efforts are vital. There are myriad numbers of private sector agencies that work in this area, and we really owe it to them to enhance their own training and to coordinate their efforts with those that governments can provide.

Again, my written statement mentions a number of the training programs and symposia which we have either hosted or participated in. Those of my colleagues and I who have worked most of our time in the litigation arena I think tend to focus more on problems than we do on successes, and I do think it is important even as we deal with these often horrible problems, that we recognize that there are large numbers of dedicated providers of services and caregivers while at the same time, we continue our efforts to deal with those who abuse our older citizens.

I would be happy at this point to answer any questions.

[The prepared statement of Mr. Schiffer follows:]

Department of Justice

STATEMENT

OF

STUART E. SCHIFFER
ACTING ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

CONCERNING

EFFORTS TO COMBAT ELDER ABUSE, NEGLECT, AND EXPLOITATIO

PRESENTED ON

JUNE 14, 2001

STATEMENT OF STUART E. SCHIFFER

ACTING ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION
U.S. DEPARTMENT OF JUSTICE

BEFORE THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

JUNE 14, 2001

Mr. Chairman, I appreciate the opportunity to appear before you to discuss some of the important issues which are the focus of today's hearing. We are grateful for this Committee's bipartisan approach to and leadership on this increasingly important topic. I also would like to thank this Committee's former Chairman, Senator Grassley, for his work in putting the issues on the national agenda.

As the Committee is aware, until a few weeks ago, the Attorney General was the Department's only Senate-confirmed official. Thus, this Administration is still in the process of formulating its policies and priorities. However, I will endeavor briefly to discuss some of the Department's ongoing efforts.

The number of Americans over 65 will more than double to about 70 million in the next 30 years, with those needing long term care projected to double from about 7 million to 14 million. Previous testimony before this Committee, as well as government, academic, and media reports indicate that seriously inadequate care remains a persistent

problem in some nursing homes and other long-term care facilities. Caring for growing numbers of older people at home also presents increasing challenges and risk of abuse and neglect, as well as huge demands on and ensuing stress of caregivers. Against this backdrop, and to respond to these growing problems, the Department is pursuing its nursing home initiatives and elder justice efforts. A primary objective of these efforts has been to enhance enforcement, training, coordination, public awareness and research at all levels.

Given the complexity of the issues, and their increasing demographic significance, the Department's efforts to combat elder abuse, neglect and exploitation have been multi-faceted, and include the following: (1) stepped up prosecution, (2) education and training, (3) broad-based interagency and multi-disciplinary coordination, (4) promotion of medical forensics, and (5) funding, research, programs, and statistics, to fight elder victimization.

1. Stepped up Prosecution

Elder abuse and neglect in institutional, community and domestic settings, and financial fraud, exploitation, and discrimination targeting older victims are at issue in federal civil, criminal, and civil rights cases brought pursuant to a variety of federal

statutes and theories.

Cases involving Institutional Abuse and Neglect

Historically, cases involving elder abuse and neglect in institutional settings were the province of federal regulatory, and state and local law enforcement efforts. Enforcement differed significantly from state-to-state and community-to-community, depending on existing state laws, enforcement practices, and resources. The majority of cases were pursued against low-level employees, such as Certified Nurses Aides (CNAs), although several Medicaid Fraud Control Units and at least one District Attorneys office have pursued civil and/or criminal cases against owners, operators, and/or corporate entities responsible for wrongdoing. In addition, a few state Attorneys General have pursued consumer fraud cases against long term care facilities that did not deliver the services and care they promised.

In the last few years, the Department has begun to pursue cases involving allegations of abuse and neglect by long term care providers. In pursuing these cases, a central priority is – at each step along the way – to balance the law enforcement and public health goals. Said another way, we have attempted to handle these cases so that they serve to deter future wrongdoing, recoup lost funds, protect residents, and improve

care.

Civil cases – False Claims Act and Bankruptcy

The majority of cases alleging institutional abuse and neglect – failures of basic care leading to profound malnutrition, dehydration, pressure ulcers, scalding, and other illness, injury or death – have been pursued under the civil False Claims Act, a financial fraud statute. The theory in these cases is straightforward – the United States paid for requisite care and services that the defendant knowingly did not provide, but for which it sought reimbursement. Two courts have affirmed this theory and about ten failure of care cases have settled in the last five years. Resolution of these cases – pursued against single facilities and smaller chains – has included payment of monetary damages, and, importantly, contractual or injunctive remedies designed to protect residents and improve care. Settlement terms in the majority of these cases have required imposition of a temporary monitor and implementation of specific protocols and training to improve care, for example in wound care or diabetes management, if that is where the entity demonstrated problems.

The last two and one-half years presented new challenges with the financial decline and bankruptcy filings of five of the seven largest nursing home chains – owning

approximately 300 to 450 facilities each. For five such substantial entities to file for bankruptcy in such a short a period (in addition to many smaller entities) was extraordinary (and the subject of a hearing by this Committee last September). The Department's False Claims Act investigations against some of these entities involved monetary claims of tens or hundreds of millions of dollars, in addition to troubling failure of care claims.

The Department of Health and Human Services closely monitored whether and to what extent the care offered by the bankrupt facilities was compromised as a result of their financial problems and drew up "contingency plans" in the event any of the chains suddenly closed or liquidated. The Department of Justice worked closely with HHS to negotiate appropriate settlements balancing the factors set forth above. On the one hand, bankruptcy should not provide general amnesty for massive fraud. On the other hand, the Departments of Justice and Health and Human Services were mindful of the potential public health ramifications of the sudden closure of any one of the chains.

The only one of the five large chain cases to have emerged from bankruptcy to date settled False Claims Act allegations for more than $100 million, $20 million of which was attributable to failure of care claims – the largest such case ever settled. In addition, the corporation entered into a ground-breaking corporate integrity agreement

with the HHS Inspector General, covering not only financial integrity but quality of care. The agreement calls for a temporary monitor (paid for by the defendant). In addition, because the chain consisted of more than 350 facilities, instead of requiring specific protocols, the agreement calls for implementation of systemic controls, improvements, and training, with the goal that those changes become standard operating procedure even after the agreement is no longer in place.

Criminal cases

The Department has pursued criminal cases that have implications for older nursing home residents; others are in the pipeline. One case involved a resident of an Arkansas nursing home who was found bleeding in a ditch. She was returned to the nursing home, cleaned up, and briefly taken to a hospital. Her records were falsified to say that she had fallen out of bed. She died within 24 hours. Officials at the facility were charged with false statements to federal officials, including the FBI, regarding the events leading to the resident's death. In another case, a nurse was prosecuted when she falsified records to conceal a medication error.

An entity that is convicted of a criminal offence related to abuse or neglect, is subject to mandatory exclusion from federal health care programs. Thus, in a case where

a subsidiary of a major nursing home chain pled guilty to criminal financial charges, the Department worked closely with HHS to obtain an agreement with the defendant that would protect residents from the sudden closure of the facilities as the result of the mandatory exclusion. The "divestiture agreement" required the entity to divest itself of the facilities it owned before the exclusion took place and provided for sanctions if it failed to do so.

In addition, public corruption can lead to the requisite nursing home standards being improperly compromised, in turn harming residents. A federal criminal public corruption case in Oklahoma, led to the conviction of the deputy commissioner for health and a nursing home owner of soliciting and offering to pay a bribe, respectively.

Civil Rights cases

The Civil Rights Division pursues cases under the Civil Rights of Institutionalized Persons Act (CRIPA), where public nursing homes or other public institutions have neglected or abused residents entrusted to their care, or have failed to meet residents' constitutional or federal statutory right to adequate care and services. These cases generally involve an extensive investigation of the conditions and practices at the facility, efforts to remedy the offending practices, and, where necessary, the filing of a CRIPA

action. Resolution of CRIPA suits generally include reaching a written agreement with the jurisdiction that provides for remedial relief in each one of the areas in which the institution failed to meet the needs of the residents, such as medical and nursing care; psychiatric care and services; physical, occupational and speech therapy; protection from harm, abuse and neglect; and undue or improper use of restraints. In order to ensure ongoing compliance, the agreements typically provide for extensive monitoring of the remedial agreement with onsite Monitors and/or full access provisions. In a case against the City of Philadelphia's public nursing home, the Department brought CRIPA and False Claims Act causes of action simultaneously in the same case.

Elder abuse and neglect in domestic and community settings

Elder abuse and neglect cases are most often handled by state and local law enforcement. If, however, federal funds are involved or a federal statute has been violated, the Department has jurisdiction. For example, a failure of care case (similar to the False Claims Act cases pursued against nursing homes) may be pursued against a home health care agency that knowingly bills the United States for services it did not render or rendered so poorly as to constitute no services at all. Mail fraud, wire fraud, or other federal criminal charges also may be considered in such a case.

In addition, Congress recently enacted legislation – supported by the Department – giving State Medicaid Fraud Control Units jurisdiction to pursue abuse cases against assisted living and other community-based facilities, even if they do not receive Medicare or Medicaid funding.

Health care fraud

Health care fraud also harms elders in another fashion. Those who defraud programs intended to benefit older Americans steal from all those who contribute to and rely on those programs. The Department's extensive health care fraud efforts, in partnership with other federal and state enforcement agencies, in FY 2000 won or negotiated more than $1.2 billion in judgments, settlements and administrative impositions in health care fraud proceedings and cases. Of that amount, more than $717 million was collected and returned to various state and federal health care programs, with $577 million returned to the Medicare Trust Fund. These finds now can be used properly – to fund the requisite care for those who need it.

Financial Fraud, Exploitation, and Discrimination

Older people in declining health, mobility, and sometimes cognitive capacity, are not only more vulnerable to physical and psychological abuse and neglect, but also to financial exploitation. Indeed, there seems to be a correlation between the two, with victims of financial exploitation appearing to be at higher risk for other forms of abuse and neglect. The Department's United States Attorneys' offices and its Criminal and Civil Divisions - using mail fraud, wire fraud, credit card fraud, conspiracy, money laundering, and other federal criminal charges – have successfully prosecuted many people who defraud older people through telemarketing, Internet, credit card, and advance-fee fraud. Three major undercover operations directed at telemarketing fraud, for example, resulted in prosecution of more than 1,400 persons for telemarketing-fraud charges. Sentences in these cases have ranged as high as 14 and 18 years. In one very recent case, a telemarketer who preyed upon elderly victims - including an 82-year-old woman who told the defendant that her husband was in the hospital dying of cancer - was sentenced in the Central District of California to 115 months imprisonment.

The Department's Civil Rights Division also has been pursuing several types of cases against those who exploit or discriminate against older people. Some predatory lenders target older persons – usually elderly minority women -- for loans with higher

prices and more onerous terms and conditions than for other borrowers. Older persons can lose substantial equity or even their homes as a result of such predatory lending practices. The Civil Rights Division has brought cases to redress these problems under the Fair Housing Act, which prohibits discrimination on the basis of race and gender, and the Equal Credit Opportunity Act, which prohibits discrimination on those grounds and on the basis of age. The Division also has brought cases under statutes such as the Americans with Disabilities Act and the Fair Housing Act to redress discrimination against older people with disabilities. For example, the Division has brought suits under the Fair Housing Act against local governments that blocked the development or operation of group homes for persons with Alzheimers.

2. Education and training

The number of entities with potential involvement in elder issues is daunting. Often there are more than twenty different entities or types of professionals in any given community with information about and potential authority relating to elder abuse, neglect and exploitation. Many of these entities are unaware of the others existence, let alone role. There has been substantial demand for the Department, which has trained more than 1000 people in the last two years, to play a leadership role in bringing together, training, and coordinating the many diverse entities.

3. Coordination and Outreach

Given the myriad entities involved in this issue, improved coordination is imperative. The Department has reached out to healthcare, social service, public safety, academics, and advocates, as well as to industry. We have promoted a number of broad-based multi-disciplinary collaborations not only at the national policy level, but also at the state and grass roots. These efforts in part emulate well-established and funded infrastructure that exists for child and juvenile issues. State Working Groups (SWG) have been formed (or expanded where they existed), including representatives of the many entities that play a role in nursing home abuse and neglect prevention. These SWGs provide a forum for key players to share information and skills, identify problem facilities and best practices.

Coordination at the federal level has been significantly enhanced by productive monthly Nursing Home Steering Committee meetings attended by numerous components of the Departments of Justice and Health and Human Services to address specific cases and policy issues. In the last few months, an interagency working group focusing on elder abuse and neglect issues has met regularly to discuss each entities' activities and

potential areas for collaboration.

In addition, the Criminal Division has begun a pilot project with U.S. Attorneys' offices in five metropolitan areas and the AARP, to establish Elder Fraud Prevention Teams that can educate older Americans in those areas about consumer fraud scams targeting them. These teams involved partnerships among AARP state offices and multiple federal, state and local law enforcement agencies in each area.

4. Medical-Forensic issues

There is wide-spread consensus that detection, diagnosis, research, training, availability of experts and multi-disciplinary cooperation are less advanced in the area of elder abuse and neglect than in other areas, such as child abuse and domestic violence. This has an impact on our ability to pursue and treat elder abuse and neglect, because it often goes undetected. Moreover, the medical community is rarely trained to diagnose or report it. Even when it is identified, there are very few experts who can provide medical forensic testimony in any ensuing case. The Department thus hosted a roundtable discussion entitled Elder Justice: Medical Forensic Issues in Elder Abuse and Neglect, to address these issues. Healthcare, law enforcement, and social service experts participated.

Recommendations from the medical forensic roundtable that could have a significant impact on the ability of law enforcement to pursue elder abuse and neglect cases included (1) creation of national or regional forensic centers for elder abuse and neglect, similar to those for child abuse and neglect, (2) creation of multi-disciplinary fatality review teams to evaluate cases of suspected elder abuse and neglect, again, similar to those for other types of family violence, and (3) training of a group of geriatric-forensic experts, similar to pediatric-forensic experts, who are of great assistance in identifying cases, referrals to and interaction with the justice system.

5. Funding, Research, Programs, and Statistics to Fight Elder Victimization

The Department of Justice through its Office of Justice Programs (OJP), makes grants, funds training, technical assistance, coordination efforts and other programs, sponsors research, publishes statistics, and identifies needs. Through these and other activities, OJP works to improve understanding, prevention, intervention, and prosecution of crimes and assist victims. Given the many entities with involvement in these issues, the dire need to expand our knowledge, improve detection, multi-disciplinary coordination and law enforcement efforts at all levels, OJP is uniquely

situated to tap into expertise, apply lessons learned in other areas, and take a national view of this issue.

Conclusion

The cost of elder abuse and neglect is high. The Committee can be assured that the Department of Justice will continue to play a lead role and to work with this Committee in addressing the myriad issues which I have briefly discussed this morning.

The CHAIRMAN. Thank you, Mr. Schiffer, for that summary of your testimony.

Let me just try to get an understanding of how the Department of Justice works in these areas of elderly abuse. Is there a section over there that specializes in that, or under what assistant secretary is this activity pursued?

Mr. SCHIFFER. These issues are so broad in their dimension that they really cut across areas within the Department. We have efforts underway in the Civil Division where I reside, in the Civil Rights Division, the Criminal Division, and the grant-makers in the Office of Justice Programs.

What we have tried to do, and I think we are succeeding in doing in recent years and certainly are continuing to do, is to coordinate those efforts. We have appointed nursing home coordinators, for example, who try to bring together the resources of the entire Department.

The CHAIRMAN. If you had it spread out in the Civil Division, the Criminal Division, and I think you said the fraud—or, the Civil Rights Division——

Mr. SCHIFFER. That is correct.

The CHAIRMAN. So you have three different divisions, I take it, looking at problems with seniors. Has anybody ever thought about whether it would make sense to have one, single senior coordinator who oversees this instead of having it in three different buildings where they probably do not talk to each other very much?

Mr. SCHIFFER. But we do talk to each other; we talk to each other more and more, and I think there have been very healthy coordination efforts going on. There is real expertise in these areas that sometimes cuts across not just elder abuse but child abuse and domestic violence, and I think there is something to be said for continuing to have this multidisciplinary focus as long as there is coordination taking place.

The CHAIRMAN. So if I didn't know what you just told me, and I was a new Member of Congress, and I decided to call the Justice Department, and I said, "I want to talk to the person who the chief protector of seniors in this country," whom would I talk to?

Mr. SCHIFFER. If we were dealing with nursing homes, certainly we would put you in touch with our nursing home coordinator.

The CHAIRMAN. Suppose I want to talk to someone who has been the subject of telemarketing fraud; where would I go?

Mr. SCHIFFER. You could always call me, Mr. Chairman. I would be glad to take your calls.

The CHAIRMAN. I understand that, but what I am trying to figure out is if there is not a better way to coordinate this kind of activity, and instead of having it in three different divisions—and I am not being critical; it has probably been like this for decades—I am just saying would it not be an idea that should be pursued to have a single coordinator of programs to look at and prosecute and coordinate activities dealing with senior problems.

Mr. SCHIFFER. I am certainly not suggesting, Mr. Chairman, that there are not better ways to do it and that we should not explore those ways. We will continue to do so, but I think we really do need to be able to call on the expertise that exists in various components of the Department, and we are doing a remarkably better job when

you talk about telemarketing efforts, for example, within the Criminal and the Civil Divisions in bringing those cases.

The CHAIRMAN. Is the major responsibility in this country for dealing with senior abuse and fraud a State matter or a Federal matter?

Mr. SCHIFFER. As I said in my opening remarks, I think the State and local government officials will always have the leadership role. We do pursue these cases. Our jurisdiction tends to follow Federal funds, for example, where Medicare and Medicaid funds have been at issue. There is much that we can do, but I think we can also do much with respect to training and education of State and local officials.

The CHAIRMAN. Tell the committee a little bit about—we spend $270 billion a year on Medicare in this country and a substantial amount on Medicaid, and much of it covers nursing homes, for instance, and institutional care—tell us how cases of abuse in nursing homes, for instance, are handled. If someone knows about abuse in a nursing home, where is the first stop? Is it the U.S. Attorney, or is it the local sheriff? Who prosecutes people who are mistreated in institutions in this country?

Mr. SCHIFFER. People should be free to go either to the local U.S. Attorney or to State and local officials hopefully to get a response in either of those areas. We bring such cases on the civil side, to recover funds, to seek the appointment of monitors and other forms of injunctive relief to bring nursing homes into compliance, and we bring criminal prosecutions. But we are never going to cover the entire waterfront.

The CHAIRMAN. Is there some kind of memorandum of understanding between State Attorneys General and the United States Department of Justice with regard to how these prosecutions are to be handled, or is there sort of a catch-as-catch-can procedure?

Mr. SCHIFFER. Most of those understandings are worked out at the local level between a local United States Attorney and his State and local officials, because we find that our U.S. Attorneys tend to have close relationships with the State and local officials.

The CHAIRMAN. So there is no official memorandum of understanding as to how that is to be handled that you know about?

Mr. SCHIFFER. I do not know about something of that order.

The CHAIRMAN. Do you think that would be helpful?

Mr. SCHIFFER. It may sound trite to say it; I think flexibility is often helpful as well, though. I think that local circumstances differ greatly; the resources of our U.S. Attorneys differ. And I still prefer to see those matters worked out in that fashion, provided they are worked out and provided they are effective.

The CHAIRMAN. Is there any area that you are concerned about that seems to be slipping through the cracks as far as enforcement is concerned?

Mr. SCHIFFER. I think I could name almost any area and say that we have to be concerned about it. Certainly at this stage, we cannot appear here and say that these problems are being fully addressed.

The CHAIRMAN. But there is no area that stands out as more of a problem or a greater problem than any other?

Mr. SCHIFFER. I would have said, obviously, nursing home abuses, but I certainly cannot disagree with both your opening statement and Senator Craig's when you point as well to problems with even family caregivers that are rampant.

The CHAIRMAN. Thank you very much, Mr. Schiffer.

Senator Craig.

Senator CRAIG. Stuart, thank you for being here. I think Senator Breaux in his line of questioning has demonstrated that while the issue is important, it covers a broad category or scattered areas within DOJ and that there is not, if you will, a collective, organized, central point at which you deal with these issues.

That is very reflective of our experience in Idaho. I mentioned 2,100 cases last year—but that is after a concerted effort to educate and train and cause to understand prosecutors to have some ability at the county level to even be able to cope with it or identify it. And we could not go to the Justice Department for that training. I am told that in my State, we had to outreach to other States that had developed a level of expertise on their own; that there was no one within the official legal community who could offer that kind of training to prosecutors.

Therefore, as you know well, if prosecutors cannot be secure in what they are doing and have a base of knowledge from which to identify whether it is a bruise that is a result of falling or a bruise inflicted by a caregiver, or have people who can help identify that as we now have developed some expertise in the area of child abuse. Then they will walk away from those kinds of things. If there is not the ability to track a financial transaction that may strip an individual elder or senior of his or her property, then, there is tendency to step back from that.

I have a couple of questions for you, Stuart. Does current law provide sufficient flexibility for DOJ to target funds addressing the problem of elder abuse even in the absence of specific line item appropriation?

Mr. SCHIFFER. I think it is always difficult to draw lines between the desire, frankly, of the Congress on the one hand to provide formula grants, and on occasion to earmark funds, and the need for flexibility. I think that until we are satisfied that we are fully using the tools we have available, I am not in a position today to propose, for example, legislation. But there is always a need for flexibility as we learn more about the area, as we increase our own training efforts. We have ways of dealing even with areas like formula grants, where money is mandated by statute to be given out according to a certain formula. The acting assistant Attorney General for our Office of Justice Programs, for example, recently wrote a letter to the State formula grant administrators urging them to pay careful attention to areas of elder abuse and target funds whenever possible in these areas.

So we do try to maintain maximum flexibility within some of the constraints that we have.

Senator CRAIG. Is there need for more flexibility, specifically designated by Congress in the appropriations process?

Mr. SCHIFFER. I suspect that those who administer, for example, grants would always say they could use more flexibility. I am not sure that I am in a position to specify right now.

Senator CRAIG. What does DOJ do to provide training and grant money to entities addressing the problem itself? You had mentioned some reference to—is there an effort or has there been an effort to present a program within which training can be identified and States and their legal systems can utilize it?

Mr. SCHIFFER. If you had asked me that question 5 years ago, I think I would have had to tell you that we are really just at a beginning stage. Those efforts are growing. We have put on regional symposia, for example, for State and local officials, private sector officials. We have trained about 1,000 officials in some of our programs. We need to do more, and we are going to continue to do more.

Senator CRAIG. Does DOJ's website make any reference to elder abuse and any listing of grants or programs that might be utilized for the purpose of addressing this problem?

Mr. SCHIFFER. Given my own lack of computer literacy, I have difficulty discussing websites, but I am told that our website is there and that our website needs to be enhanced, and that is something that we are going to concentrate on.

Senator CRAIG. So it probably does not.

Mr. SCHIFFER. It does make reference; it needs to be updated and made more thorough.

Senator CRAIG. Could a task force similar to the Bureau of Justice Assistance Telemarketing Fraud Task Force be created for elder abuse that might assist in both prevention and prosecution?

Mr. SCHIFFER. We do have task forces in that area. We do not have the full equivalent of the task force you mention, where I think there are specific funds appropriated for that purpose. I know that anybody who appears before you says we need more funds. I am constrained in my ability to——

Senator CRAIG. What I am asking is—more funds are going to be difficult to get; they always are—is there a way to reshape what we have and for Congress to give direction to the Justice Department to reshape some of what we have and to be able to offer those kinds of programs out to the States in this area, and is there a way to build with current abuse identification education programs an elder component or a senior component which would allow a broadening of that training experience by local prosecutors and law enforcement?

Mr. SCHIFFER. I think "yes" is the short answer. We are looking for ways to enhance our efforts. I think we are doing a much better job, and we need to work specifically with this committee and its staff to see that we bring our resources to bear in a more efficient manner.

Senator CRAIG. Mr. Chairman, Stuart, thank you.

The CHAIRMAN. Thank you.

Senator Kohl.

Senator KOHL. Thank you, Mr. Chairman. With your permission, I will yield to Senator Stabenow, who has to leave shortly.

The CHAIRMAN. Certainly.

Senator Stabenow.

Senator STABENOW. Thank you, Senator Kohl, and Mr. Chairman, thank you for providing this important hearing, and I apolo-

gize for running in and out this morning. I am trying to be in two places at once, as we often try to do.

I did want to ask, however, to submit for the record comments about this area and particularly note that Citizens for Better Care in Michigan have been designated as a national model for prevention and education. They do a train the trainer program, and as Senator Craig was speaking about those issues, I would just urge that you look closely at what is being done in Michigan, because there is an excellent training program that is occurring, and we appreciate very much what is happening in Michigan. So I would appreciate being able to enter that in the record.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Without objection, it will be made part of the record.

[Statement of Senator Stabenow follows:]

PREPARED STATEMENT OF SENATOR DEBBIE STABENOW

I would like to thank the committee for convening this hearing on the extremely important topic of elder abuse. This is a difficult problem to quantify. For example, it is estimated that only 1 in 14 cases of domestic elder abuse ever come to the attention of authorities. The State of Michigan issued a report last December entitled, "Elder Adults at Risk." According to the report, 9,000 adults received services from the state as the result of reported elder abuse. However, this number only represents a fraction of the abuse that experts believe is happening in our state. As our population ages and individuals live longer lives and spend more time in the care of others, it is sad fact that the incidence of elder abuse has the potential to increase substantially.

Michigan has a wonderful elder abuse prevention and education program, run by Citizens for Better Care, which has been listed as a national model by the National Ombudsman Resource Center. As we know, the Older Americans Act mandates that Area Agencies on Aging address elder abuse issues and in my state the majority of our agencies have contracted with Citizens for Better Care to meet that requirement. As an aside, I would like to pitch that increased funding would be very beneficial and would only strengthen our program not just in Michigan but programs across the nation, as well.

In Michigan, Citizens for Better Care offers a "Train the Trainer" program under the skilled leadership of Anne Marie Koebel. Nursing homes, adult day care programs, home health agencies and other interested groups send one of two members of their staff to the training program and then they take what they have learned back to their colleagues. This sharing of information has proven to be very successful. The program defines elder abuse according to State law, examines the reasons that it occurs and offers viable solutions for preventing abuse. I am so pleased that such a model program exists in my state.

I also think we need to pay increased attention to domestic elder abuse. Some elder abuse is the continuation of a long-standing pattern within a family of domestic violence and I think that elder abuse should be a part of any debate on domestic violence. Other types of elder abuse often are the result of stressed or ill family members who are not equipped with counseling our support to care for their loved ones. The National Family Caregiver Program, the topic of one our previous hearings, is an excellent way to get services to these families who need help.

Another issue that merits attention is variance from state to state in their definitions of elder abuse. For example, some states include financial exploitation in their definition, others do not. It would take careful analysis, but I think it would be helpful to examine the usefulness of a national minimum definition of elder abuse to help clarify the issue.

I look forward to the testimony of all the witnesses and I am very interested in working with the committee to find solutions for this national problem.

The CHAIRMAN. Senator Burns.

Senator BURNS. Thank you, Mr. Chairman.

I went through a situation with one of my aunts in regard to a telemarketing scam. I also had a mother who was in a nursing home.

Mr. Schiffer, your hands are kind of tied unless you get a complaint. It is my experience talking to nursing homes and talking to elderly who are in nursing homes or in home care or even in the care of their own families, that if they have been abused, they will not say anything. They are afraid to. And that is where we find most of our problems occur, when people are either afraid to admit or are afraid that they will be further abused if action is not taken.

We are finding that nursing homes in small towns are struggling for the right kind of personnel, the ability to pay them for the work that they do, and it creates an environment where abuse happens. It even happens within families.

Can you tell me as a person who follows this dilemma that we have with our elderly how much abuse occurs, for example, in a care facility and also under the care of the family?

Mr. SCHIFFER. First, I think the Senator is certainly correct—there is consensus that crimes affecting the elderly are underreported and perhaps more so than in many other areas. I attempted in my opening remarks to make clear that there are many honest and decent providers and caregivers out there. The percentage, though, with respect to nursing homes is a matter of great concern. We sometimes see reports that in as many as half of the individual nursing homes, there are instances of abuse and neglect.

Senator BURNS. But what is the percentage—do you also get complaints when a person is under the care of a family or staying in the family home? Do you get those kinds of complaints as well?

Mr. SCHIFFER. Those are probably the hardest matters to have brought to the attention of law enforcement authorities. I think the major effort and the effort of this hearing today is to focus people on the need to report these.

We have similar experiences with domestic abuse. Those were always things that were thought to be private, things that should not be reported, and I think there is growing awareness in this country, frankly, that these are very, very serious issues that need to be dealt with.

Senator BURNS. Let us say I am in a skilled care facility, and I think I am being abused, and I pick up the telephone and call the sheriff. What happens?

Mr. SCHIFFER. There should be State regulatory authorities dealing with these problems. Something should happen. People should look into these promptly, and they should be brought to the attention of either law enforcement or State regulators.

Senator BURNS. Does the sheriff turn it over to another agency in the State or in the country for prosecution or investigation?

Mr. SCHIFFER. We find that that differs widely from jurisdiction to jurisdiction. Just as our own Federal lines are sometimes less than clear, the same is true in State and local areas.

Senator BURNS. Well, I think this is an important hearing, and why I think it is important is not that I do not think we need more laws, but this is an awareness thing that we want people to step forward without fear so that if they think they are being abused, they can report it, and the abuser can be dealt with in a proper fashion.

If we look at our nursing homes now, even in the medium areas, but especially in rural areas where nursing homes tend to be small-

er and it becomes very difficult to get good help, that creates a situation where abuse does take place. But they are also reluctant to report for the simple reason that they cannot find the people.

Mr. SCHIFFER. Well, the Senator is correct. You alluded a few moments ago to telemarketing, where it tended to be an embarrassment; when an elderly citizen was victimized, even to the extent that the citizen realized that he or she had been victimized, it was an embarrassment. We see there, for example, growing awareness. We see efforts by organizations like AARP. We have vastly increased the number of cases that we are bringing. Recently, for example, in the last several years, we have started bringing cases in Canada, where we see telemarketers located in Canada preying on elderly American citizens, aware that the Canadian authorities, just as is true in this country, have limited resources and are less likely to be able to apply those resources where Canadian citizens are not involved, and we have brought four or five cases against telemarketers there.

Senator BURNS. Let me tell you how I finally got my old aunt to admit. We kept finding receipts where she was wiring money to somebody in Atlanta, GA. Now, this lady lived in northwest Missouri, and every time I could go by to see her, there would be more receipts there. I asked her about those receipts, and she just would not talk about it. I mean, she would just clam up. I also asked her if she knew anything about her grandfather, who was my great-grandfather, and she asked, "What do you want to know about that for?"—I think he was a crook or something, although I am not real sure—he rode with Jesse James.

Senator CRAIG. A horse thief.

Senator BURNS. Well, yes. He rode with Jesse James. That is pretty good.

Anyway, I will tell you that the FBI in their magazine had an article about telemarketing scams. So I took that magazine, opened it up to that article, and left it at her house when I left one day. And the next time I visited a couple of weeks later, she finally said we have a problem.

I had called the district office in Saint Joseph, MO, and we got these guys—we nailed them. So that is what you have got to do. But I will tell you that it takes somebody who really wants to get in there, and it takes a nephew, or a niece, or a son, or whatever, once you set your satchel down, because the elderly person is not going to admit it and will not cooperate, because they find it embarrassing—and then, some of them are so lonely that that is the only phone call they get, and they have found a friend, and if it costs 100 bucks, it costs 100 bucks. But they got this aunt of mine for $125,000—and my Lincoln—no. So I am telling you it is something that is a real problem.

So the point is that the family or some interested member is going to have to take it under their wing and carry it out, because your hands are tied until you get a complaint; those complaints are very, very difficult to get, and once they are received, they are very difficult to handle with our elderly.

So I think, John, this is a very, very important hearing, but it will be more to elevate awareness of some things that go on with our aging population. So I thank you for that.

The CHAIRMAN. Thank you, Senator.

Senator Kohl.

Senator KOHL. Thank you, Mr. Chairman.

Mr. Schiffer, in 1998, Congress gave home health care agencies and nursing homes the ability to use the FBI criminal background check system to weed out potential employees with criminal histories. In February of this year, the Department of Justice issued a report that found that so far, 7 percent of those background checks have come back with serious criminal convictions, including such things as rape and kidnapping.

Unfortunately, too few providers are using this tool, in part because they do not know about it. What is the Department doing about informing providers that there is such a system to be used?

Mr. SCHIFFER. This is certainly a very serious area. We have established, and we have, I think, very productive monthly Nursing Home Steering Committee meetings in the Department, attended by not only components of the Department, but the Department of Health and Human Services. We are reaching out to the extent we can to the State regulators, to our own inspector general at HHS, and trying to deal with the very, very serious staffing problems, both understaffing and the failure to report that the Senator mentioned.

Senator KOHL. Maybe you did not quite understand what I was saying. I was saying that there is a tool that can be used, which is the FBI background check system. Is there a reason why we would not like to see or could not insist or could not be sure to let every provider know that there is such a system that they can access to determine whether potential employees have background problems?

Mr. SCHIFFER. There is no reason why we should not be doing that, and I will see that we redouble our efforts to do that.

Senator KOHL. It would seem to me that the first line of defense in this problem is to weed out those potential employees who obviously should not be employed because they have problems in their past, and if the FBI is there to help us do it, and if we are really serious, which I know we are, about trying to keep these people off the payrolls to begin with, it seems to me that the FBI background check is a great place to start.

Mr. SCHIFFER. The Senator is certainly correct.

Senator KOHL. Thank you.

[The prepared statement of Senator Herb Kohl]

PREPARED STATEMENT OF SENATOR HERB KOHL

Thank you, Mr. Chairman. I appreciate your holding this hearing on this very important, but tragic, topic of elder abuse.

There is absolutely no excuse for abuse or neglect of the elderly at the hands of those who are supposed to care for them. Our parents and grandparents deserve to live out their days with dignity and the highest quality care.

Unfortunately, we know this is not always the case. I know that the majority of caregivers are dedicated and do their best under difficult circumstances. But too often, the elderly are starved, shamed, abused, and exploited. And the systems that are in place today are not enough to protect them.

Later today, I along with Senator Reid, will reintroduce the Patient Abuse Prevention Act. This legislation is a first step to prevent Elder Abuse by long-term care workers—including home health agency workers.

Specifically, my bill would create a National Registry of Abusive Long-Term Care Workers, which will prevent abusers from moving from state to state continuing to

find work with vulnerable patients. Second, it requires an FBI criminal background check to prevent people with violent criminal convictions from working with vulnerable patients.

There is clear evidence that this is needed. In 1998, at my request, this Committee held a hearing on this issue. The HHS Inspector General presented a report which found that, in the two states they studied, between 5–10 percent of employees currently working in nursing homes had serious criminal convictions in their past. They also found that among aides who had abused patients, 15–20 percent of them had at least one conviction in their past.

But even more compelling, we heard from Richard Meyer of Libertyville, IL, whose 92-year old mother was raped by a nursing home worker who had a previous conviction for child sexual abuse. A criminal background check could have prevented this tragedy. But even more appalling, there is nothing in current law that prevents her assailant from travelling 50 miles to my home town of Milwaukee and finding another job in a home health agency.

There's no greater illustration of the need for background checks than this. But for those who need hard data, there is more evidence. In 1998, I offered an amendment which became law that allowed long-term care providers to voluntarily use the FBI system for background checks. So far 7 percent of those checks have come back with criminal convictions.

Clearly, this is a critical tool that long-term care providers should have—they don't want abusive caregivers working for them any more than families do. My legislation won't prevent all instances of elder abuse, but it is a common-sense first step we can take to protect our seniors.

Again, I thank you, Mr. Chairman, for holding this hearing. With the aging of our nation, we cannot afford to ignore the issue of Elder Abuse, wherever it occurs. I look forward to hearing from our witnesses.

The CHAIRMAN. Thank you very much, Senator Kohl.

Thank you, Mr. Schiffer. I wish you well in this endeavor. It is very, very important, and this committee is going to stay in touch with the Justice Department as to how we handle these areas, and we want to work with you to improve the quality of service.

Mr. SCHIFFER. We very much want to do that, Mr. Chairman, and we look forward to doing so.

Thank you.

The CHAIRMAN. Thank you.

The CHAIRMAN. I would like to welcome a panel now that will consist of Ms. Sara Aravanis, who is Director of the National Center on Elder Abuse located here in Washington; Dr. Laura Mosqueda, who is Director of Geriatrics at the University of California in Irvine, who will discuss her professional experiences in the area of elder abuse; Mr. Paul Greenwood, who is Deputy District Attorney and Head of the Elder Abuse Prosecution Unit in San Diego and has prosecuted more than 600 cases of elder abuse; and our final panel member will be Mr. Ricker Hamilton, who is Protective Program Administrator for the Department of Human Services in the State of Maine and is representing the National Association of Adult Protective Service Administrators.

Senator Craig, I understand you have someone from Idaho you might want to present.

Senator CRAIG. Yes. We are very pleased, as I mentioned in my opening comments, Mr. Chairman, to have Joanne Hopper with us this morning from Fruitland, ID. She has a very unique and I think important story to tell this committee.

Please come forward, Joanne.

The CHAIRMAN. We welcome all of you, and we have listed first Ms. Sara Aravanis.

Ms. Aravanis, please.

STATEMENT OF SARA C. ARAVANIS, DIRECTOR, NATIONAL CENTER ON ELDER ABUSE, NATIONAL ASSOCIATION OF STATE UNITS ON AGING, WASHINGTON, DC

Ms. ARAVANIS. Good morning. This hearing is a welcome event for the field of aging. Many years ago, Claude Pepper was the national spokesperson on elder abuse. We miss his consistent and tenacious attention to the problem. We hope that you, Mr. Chairman, and the committee will help our Nation address what some have called "the dark side of aging" in this country.

I represent the National Center on Elder Abuse, which is funded by the Administration on Aging, NASUA. The National Association of State Units on Aging is the lead agency. We have five partner organizations that bring special capacity and skills to our work.

Our mandate is broad. We provide research, training, and technical assistance for all direct service professionals. We educate the public, foster research, promote coordination, and disseminate good practices. Our accomplishments include an award-winning website; a list-serve of 700 members; technical assistance manuals; a leadership institute; special support for State and local Elder Abuse Coalitions; a Native American Project; and training sentinels to find hidden cases.

Every day, we strive to be the source of information and assistance on elder abuse.

Elder abuse is not a new issue. In the seventies, congressional investigations and field researchers uncovered the problem and gave it a name—"granny-bashing." In the eighties, following the child abuse model, mandated reporting emerged in State law, and during that decade, the Family Violence Network acknowledged elder abuse as part of the picture. Also, OBRA called for nursing homes to be abuse-free.

In the nineties, abuse definitions were included in The Older Americans Act. The new Title VII started funding education and prevention activities, and a National Nursing Home Abuse Prevention Initiative was launched.

Although there are many other significant events, the history of the problem is connected to the aging population shift and the lack of a national long-term care policy.

Through adult protective services, States have the heaviest financial and programmatic burden for responding to elder abuse, but Older Americans Act programs, elder abuse prevention, the ombudsman, and legal assistance play a significant role. Coordination with other Federal resources is necessary.

Several charts have been prepared to illustrate the problem. The first graph shows the steady increase in the number of reports over a 10-year period. Last year, more than 470,000 reports were made—a 300 percent increase over the base year of 1986.

Almost half of the reports were about self-neglect. About one-quarter of them involved physical abuse. Other categories include caregiver neglect, financial exploitation, emotional and sexual abuse.

It is very much a family issue. Adult children, spouses, and other family members are the most frequent abusers. Formal caregivers are also involved.

Moving to the "iceberg" chart, it shows that most of the cases simply are not reported. For each case referred to adult protective services, there are four additional cases out there, hidden from view and hidden from those who can offer assistance. And this data presented here does not even include reports of abuse in nursing homes and other facilities. The Long-Term Care Ombudsman Program received over 18,000 complaints of abuse, gross neglect, and exploitation in nursing and board-and-care facilities in 1999.

This too is only part of the picture. Data from Medicare fraud agencies, State licensure and survey, law enforcement is missing.

The elder abuse field is at a great disadvantage because there is no vehicle to collect and analyze information across agencies and funding streams. Further, in both domestic and institutional settings, it is likely that many incidents are hidden, not reported or identified at all. This lack of data makes it difficult to fairly allocate resources for elder abuse.

In addition to the concerns about data, there is a long list of issues facing the field of elder abuse. They include public recognition that abuse occurs; adequate funding for adult protective services; the difficulty of establishing cross-agency multidisciplinary interventions; assuring that serious cases are indeed prosecuted, that all components of the law enforcement, justice, and health care systems are effectively trained to work with adult protective.

More research is needed on causes and preventive strategies. We need access to experts in complex financial abuse cases.

Finally, we need to identify and fill the gaps in services, the community-based interventions necessary to prevent and help victims.

What can the committee do? First, the committee could develop a joint resolution and establish a "National Elder Abuse Prevention Week." This would encourage Governors to follow suit and spearhead many collaborative State and local activities.

Second, the committee could offer its support for restoring funding for the Social Service Block Grant, an important resource for adult protective services.

Third, additional funding for The Older Americans Act, Title VII, the elder abuse prevention activities, could be used to develop more collaborative interventions at the State and local level.

Finally, later this year in collaboration with AOA and the Department of Justice, the Center will convene a National Policy Summit on Elder Abuse. National experts will develop an action agenda, a road map for addressing many of the most serious problems. We hope the committee will play a part in this summit and in the implementation of its recommendations.

On behalf of the partner organizations comprising the National Center on Elder Abuse, we congratulate you, Senator Breaux and Senator Craig, for having this hearing, and we look forward to working with you on the challenge of elder abuse.

Thank you.

The CHAIRMAN. Thank you very much, Ms. Aravanis. We appreciate your being with us.

[The prepared statement of Ms. Aravanis follows:]

TESTIMONY

Senate Special Committee on Aging
Investigative Hearing

"Elder Abuse, Neglect and Exploitation:
A Hidden National Tragedy"
June 14, 2001

Testimony Provided By

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A service of the National Association of State Units on Aging (NASUA) in partnership with:

The American Bar Association Commission on the Legal Problems of the Elderly
The National Association of Adult Protective Service Administrators
The National Committee for the Prevention of Elder Abuse
CANE at the University of Delaware
The Goldman Institute on Aging

Elder Abuse, Neglect and Exploitation:
A Hidden National Tragedy

The National Center on Elder Abuse is pleased to have this opportunity to testify on the troubling issue of elder abuse and we congratulate Senator Breaux, Senator Craig and the Senate Special Committee on Aging for leadership in bringing this issue to the public's attention. Indeed, this hearing is a welcomed event for those of us hoping for Congressional leadership on elder abuse. Many years ago, Claude Pepper was the acknowledged national spokesperson for this national tragedy and the field has sorely missed the consistent and tenacious attention that he provided. We hope that you, Mr. Chairman, and the Committee will help our nation address what some have called the "dark side" of aging in our country.

I am here on behalf of the National Center on Elder Abuse. We provide research, training and technical assistance to state aging networks, the state adult protective and elder abuse programs and to other programs such as the long term care ombudsman and legal assistance providers. Law enforcement, medical professionals and others are also assisted by the Center. We educate the public on the fact that this problem exists wherever older persons live: in individual family homes, apartments, group or assisted living and board and care facilities as well as in nursing homes. We aggressively link with governmental agencies such as law enforcement and justice to promote training, coordination and collaboration in service delivery. We assist in and promote the education of other professionals such as physicians, nurses, emergency medical and others. We reach out to the private non-profit sector to mobilize community action on behalf of abused elders and we promote research to improve our knowledge of and response to elder abuse.

In my testimony today I will provide an overview of the Center and what we have accomplished; provide brief highlights of historical developments that set a context for current initiatives; share summary data that has been collected on reports and abuse complaints; identify the most pressing problems facing the field; and suggest ways in which the Committee might continue to assist state and local entities in preventing and responding to the problem of elder abuse.

The National Center on Elder Abuse is funded by the Administration on Aging and administered by the National Association of State Units on Aging. Partner organizations who comprise the Center include the American Bar Association's Commission on the Legal Problems of the Elderly (ABA), the National Committee for the Prevention of Elder Abuse (Committee), the National Association of Adult Protective Service Administrators (NAAPSA), the Goldman Institute on Aging GIOA), and the University of Delaware's Clearinghouse on Abuse and Neglect of the Elderly (CANE). Each of the partners brings a special strength and an important constituency to the work of the Center. In particular, NAAPSA provides an essential link to the on-line staff who are dealing with the results of elder abuse, every day; ABA brings an extensive knowledge of the legal justice and law enforcement community in addition to its skill in legislative analysis and development; the Committee under the leadership of Dr. Rosalie Wolf, one

of the nation's leading elder abuse researchers, brings her personal reputation with the research community and linkage with many state and local voluntary groups; CANE brings a history and a repository of written knowledge on elder abuse; GIOA through its Elder Abuse Prevention Coalition of groups from the San Francisco area offers a practice laboratory and special technical assistance skill.

NASUA as the lead agency in the Elder Abuse Center partnership provides an essential connection to the state units on aging (SUAs) and the range of services provided through the Older Americans Act and the network of area agencies on aging. About half of the SUAs administer adult protective services and all SUAs administer the Title VII Elder Abuse Prevention activities. Their legal services, ombudsman, and case management programs are also important in the context of elder abuse prevention. From this vantage point, NASUA assists SUAs to incorporate appropriate elder abuse prevention education, service delivery, quality assurance procedures and other safeguards into the design of emerging community based care systems and to implement the new Family Caregiver Support program.

As I begin, I want to acknowledge the Administration on Aging and all that it has done on this issue over the years. Beginning in the 1970's when the first demonstration grants were awarded to identify and provide services to abused elders, AoA has utilized its scarce resources to assist state and local agencies. The in-home and supportive service they provide to millions of vulnerable seniors and their caregivers help to reduce the risk factors that lead to elder abuse. They also provide critical funding for local and statewide elder abuse coalitions and public awareness campaigns.

One of AoA's most recent accomplishments, the National Elder Abuse Incidence Study, has been instrumental in helping to focus attention on the hidden nature of the problem--- those four out of five victims who are not identified and thus are not connected to the helpers who can assist in stopping the abuse. We also commend AoA for its efforts to work across the federal government -- involving the National Institute on Aging, the Justice Department, the Centers for Disease Control and Prevention, and other agencies in on-going dialogue and collaboration on elder abuse. This initiative facilitates our efforts to open doors: to talk and work effectively with the many federal organizations which have a role to play in research and service delivery. The staff at the Administration on Aging have been extremely supportive to the work of the National Center on Elder Abuse.

A. Highlights of Accomplishments: National Center on Elder Abuse

The following are a few highlights of the Center's accomplishments over the past two and one half years due in large measure to the "watchwords" of our partnership-- coordination which requires a recognition of the multi-disciplinary nature of elder abuse intervention and dissemination, which necessitates the use of many channels of communication and information sharing:

Website. Last year the NCEA obtained its own domain name and moved its website to www.elderabusecenter.org. The NCEA website has become a crucial dissemination tool of the Center, and a recognized source of quality information about elder abuse. The site has been chosen as a featured, recommended website by MEDLINEplus, and StudyWeb. In the past year and a half it has averaged approximately 2,700 visitors a month.

Newsletter. The Center has now distributed 22 editions of its simply-designed but news-packed monthly newsletter. More than 150 articles have been published covering new resources, federal and state elder abuse developments, conferences, and much more. Five hundred and fifty copies are mailed each month to state elder abuse and elder rights contacts, including approximately 100 to selected national professional organizations. Electronic versions of the newsletter are disseminated to our elder abuse listserve and archived on the website.

Articles for professional organizations' newsletters. In order to broaden the audience of professionals who know about and may be able to assist in elder abuse cases, NCEA seeks opportunities to publish or assist in the preparation of articles in other professionals' publications. In the past year such articles were published in *Soroptimist International; Patient Care Magazine;* the newsletter of the National Association of Orthopedic Nurses; and the *Information and Referral Reporter.*

Clearinghouse on Abuse and Neglect of the Elderly (CANE). During this NCEA's tenure, CANE has completely restructured its holdings by revising its keyword list, culling its outdated materials, and recoding older materials. In the past year, CANE added 239 documents to its holdings. CANE has also developed three new databases designed to make it easier to find specific types of materials: one containing descriptions/reviews of audiovisual material; one that concentrates solely upon training materials and manuals; and a third for state reports. CANE has also begun producing annotated bibliographies that are available on the NCEA website.

Elder abuse listserve. The elder abuse listserve is one of the Center's most visible successes. At the end of April 2001, listserve membership stood at 747 subscribers. In the past year the number of monthly postings fluctuated between 35 and 89, with the average number around 54.

Technical assistance requests. In the past two and a half years NCEA has filled more than 5,250 individual requests for technical assistance. During Year 03, for instance, NCEA staff has given major assistance to the American College of Gynecologists' initiative to raise awareness of domestic violence against elder women, the Department of Justice nursing home project, the DOJ/Health and Human Services Departments' symposium on elder victimization, the Health Care Financing Administration's elder abuse prevention project, the National Academy of Science's elder abuse study, and the Delaware Attorney General's Task Force

on Senior Victims. The Center also produced a Best Practices in Ethics document for APS agencies and workers.

Technical assistance manuals. This year the Center issued an Elder Abuse Awareness Kit (aimed at speakers and trainers) that provides public education materials that are easily adaptable to a wide variety of venues and audiences. Three technical assistance manuals are in the final stages of production: one on linkages between mental health services and APS, one on APS itself, and one for elder caregivers on how to prevent elder abuse.

Workshops. Since its inception, the NCEA partners have presented at least 137 workshops, lectures, or presentations at 102 separate local, state, national and international conferences related to elder abuse and/or domestic violence. NCEA has helped support three national NAAPSA conferences and numerous regional ones. NCEA staff have also helped ensure there was substantial elder abuse content in the 2000 Law and Aging Conference, the 1999 Next Millennium Conference: Ending Domestic Violence, and many others.

Leadership Institute. This past year NCEA presented 58 NCEA Leadership Certificates to elder abuse professionals who had successfully completed training and follow-up projects concerning conflict resolution and leadership development. A total of 80 people participated in parts of the course.

Research agenda. NCEA completed a Research Agenda developed from the needs of front line staff and has begun publishing semiannual "research reviews" in the NCEA Newsletter.

Short-term research projects. NCEA is in the process of finishing two short-term research projects. One is a survey and needs assessment of community elder abuse coalitions, and the other highlights exemplary collaborations between APS and mental health agencies. In addition, 50 states provided comprehensive APS caseload data for 1999; a full report will be issued by the end of Year 03; NCEA is currently developing a Baseline Survey of APS which will provide an up-to-date picture of the structure and functions of the programs in each state.

Law Analysis. NCEA staff compiled a list of every state's law citations related to adult protective services, institutional abuse, and long-term care ombudsman programs and posted it on the website. In addition, an explanation of how to research these laws in libraries and on the Internet was developed, and links to four online legal databases were added.

Training for In-home Providers After holding focus groups with in-home workers and their supervisors, NCEA is developing guidance to agencies in how to best train their workers in elder abuse prevention and intervention, and in how to protect themselves. "Developing Training Programs for In-Home Helpers: Elder Abuse Prevention, Issues and Guidelines" will be completed soon.

Bank reporting. NCEA is completing a policy paper to guide policymakers who are trying to balance state and federal roles and privacy and elder abuse reporting needs with regard to bankers and their role in spotting financial exploitation. The paper will be completed in this summer.

Community sentinels. The NCEA project to promote the development and utilization of community "sentinels" through partnerships with state and local elder abuse coalitions and selected national organizations has been very successful. Sentinels are individuals whose job or profession puts them in contact with older persons who may be isolated tin their communities. If trained on what to look for (the signs of elder abuse), and what to do with their suspicions (referr to adult protective services and/or law enforcement) sentinels can potentially play an important role and assist in identifying hidden victims of abuse. Six sentinel project demonstration sites are nearing the end of their year-long projects. Best practices have been identified in outreach through meals on wheels providers, RSVP volunteers, nursing students, food banks, assisted living staff, court employees, and health plan staff. Their successful coordination strategies will be documented for use by others.

National Directory of State, Regional and Local Elder Abuse Coalitions. NCEA identified and published information on more than 150 coalitions – including their goals and objectives, functions and services, activities and accomplishments, training, funding sources, and products and materials.

Risk profile tool. A revised draft of "Risk Prevention Profile and Checklist: A Collaborative Approach for Preventing Nursing Home Abuse" is now being tested by the demonstration state, Minnesota. This tool helps to identify the environmental and individual risk factors for abuseand it will serve to mobilize coordinated interventions by nursing home service providers, ombudsmen, surveyors, Medicaid fraud personnel and others who are collaborating on nursing home quality care improvement initiatives.

Emergency Medical Services (EMS) personnel training. Building from a successful workshop and collaboration with a Paramedic Consultant, NCEA is developing a continuing education training module for pre-hospital providers on elder abuse -- how to recognize the signs and where to report concerns.

B. Historical Benchmarks in Elder Abuse

Moving to the second area of the Committee's interest, the history of elder abuse is not long but it is complicated. One needs to understand the factors which influenced the amendments to the Social Security Act-- particularly Title XX (currently, the Social Service Block Grant), and the Older Americans Act in the 1960's; the public welfare roles and authorities of state and local governments and how the response to older persons in

need has evolved from "poor houses" to protective services; federal and state cost sharing agreements for providing services to eligible populations; the influence of other program models such as child abuse and domestic violence; and the parallel development of legal concepts such as self -determination, competency and capacity, and struggles around individual choice when countered with concerns about safety and security.

Dr. Rosalie Wolf, in a recent speech to the National Academy of Sciences outlined a historical sequence which encapsulates much of the complexity. Briefly, her outline includes the following "eras" and actions which set a context about the roots of this issue:

Pre-1960's	Social and legal services provided for older persons through states, counties and voluntary sector with guardianship a predominate response.
1960's	Medicare, Medicaid and TXX Services amendments to the Social Security Act; the Older Americans Act passed: state offices on aging develop as focal point for all senior issues.
1970's	Title XX of the Social Security Act provides federal matching funds for services to eligible populations-- states assisted to provide adult protective services to adults in danger of being abused or neglected.
	Area agencies on aging established.
	Congressional committees begin investigations of abuse in nursing homes and domestic settings; AoA funds elder abuse demonstration grants; long term care ombudsman program emerges at state and local levels.
1980's	States initiate/amend adult protective service legislation: defining abuse, neglect, exploitation, vulnerable populations, role of adult protective service. They begin to identify those who must report suspicion of abuse (similar to child abuse model).
	AoA funds a national Elder Abuse Center.
	State adult protective/elder abuse report data collection begins, reports produced.
	Surgeon General's Report on Family Violence includes elder abuse. This influences adult protective/elder abuse linkages with law enforcement and medical communities.
	The Journal of Elder Abuse & Neglect initiated.

1990's

Older Americans Act (OAA) provides federal definition of abuse, neglect, exploitation and self neglect.

OAA Title VII provides funds to state units on aging and area agencies on aging for elder abuse prevention activities.

State laws continue to identify "mandated reporters"; collaboration with domestic violence providers begins; law enforcement education and training expands. Financial exploitation emerges as growing issue.

National Elder Abuse Incidence Study completed. Estimates that only one in five victims is helped.

President's Nursing Home Abuse initiative begun.

2000 Administration on Aging and Department of Justice collaborate on major good practices dissemination conference, "Our Aging Population: Promoting Empowerment, Preventing Victimization, and Implementing Coordinated Interventions."

2001 National Academy of Sciences panel begins examination of Risk and Prevalence of Elder Abuse and Neglect

National Action Agenda on Elder Abuse (to be developed, December, 2001).

The above listed items do not constitute a comprehensive inventory of all seminal events related to elder abuse. But rather, as the Committee requested, this historical sketch provides a context within which to consider the issues. These facts are of particular importance: elder abuse is not a new problem -- it did not just emerge in the last decade. Second, states, through adult protective services, shoulder the heaviest burden for responding to the needs of abused or potentially abused elders. Older Americans Act programs such as long term care ombudsman are likewise essential. And third, the federal governmental plays an essential role in the matching funds that it provides through the Social Services Block Grant, and through the demonstration and training grants awarded to states and localities by a number of federal agencies. Many of these grant programs have a great potential to foster good practice development and replication at the state and local levels.

C. Research: State Reporting Data

Although complicated, the history is much easier to enumerate than the third issue that the Committee asked us to discuss: What do we know about the scope of the problem,

incidence, prevalence, risk factors, proven interventions? Our perspective is that elder abuse is woefully deficient in the type of research needed to answer the basic questions and provide evidence based information on interventions that work. For this reason, we are looking forward to the outcomes of the National Academy of Sciences study and their prioritized research agenda. It is our hope that the Department of Health and Human Services, particularly the National Institutes of Health, the Centers for Disease Control, the Health Care Financing Administration, the Administration on Aging and others, along with the Departments of Justice, Housing, Commerce and others will actively pursue this agenda and fund the studies that we expect it will recommend. Some of them might be expensive (such as a national prevalence study and a more comprehensive incidence study); however, establishing more conclusive data on the extent of the problem is necessary in order to chart further action.

The National Center on Elder Abuse has collected data from states on reports of domestic elder/adult abuse since 1986. This has not been an easy task because of variations in: definitions of elder abuse, age groups covered by adult protective legislation, venues covered (for example, some APS programs receive reports of abuse in nursing homes and institutional settings, others do not), and fiscal years for which data is collected. Yet, in spite of this hardship, the Center has published data which indicates that states received 117,000 reports of domestic abuse in 1986; the number grew to 293,000 in 1996, an 150% increase; and our latest preliminary data for 1999/2000 indicates that states received 470,709 reports of elder/adult abuse, an increase of over 60% from 1996.

Trying to enumerate the elder abuse reports and complaints for older persons living in nursing homes and other facilities is even more challenging. The Fiscal Year 1999 Long Term Care Ombudsman Report summarizes the following data for ombudsman complaints received for nursing facilities: 14,861 complaints of abuse, gross neglect, exploitation. These include sub categories such as physical abuse, complaints of verbal/emotional abuse, and neglect. For residents of board and care facilities, the 1999 data indicate that 3,406 complaints of abuse, gross neglect and exploitation were received by ombudsman programs, nationwide. However, it is important to note that the ombudsman data presents only part of the picture. Reports submitted to State Medicare Fraud Agencies, state licensure and survey agencies, and to law enforcement when combined with ombudsman information would provide the most comprehensive picture. Unfortunately, there is no vehicle to collect and analyze the information across agencies and funding streams. And further, it is likely that many incidents are hidden, not reported or identified at all.

D. Problems Facing the Field

The most serious problems facing those who are concerned about elder abuse include: adequate funding for adult protective services including resources sufficient to assist programs to develop and meet quality standards; public recognition that abuse occurs and that there are services to help; the difficulty of establishing cross agency and multi-disciplinary interventions; knowing about and being able to implement validated prevention activities; assuring that serious cases are prosecuted and that judges,

prosecutors, attorneys, law enforcement and victim advocates are effectively trained to work in collaboration with adult protective services; providing training for all components of the health care system so that abuse is recognized and those professionals are involved in interventions; filling the research gap; accessing experts who can assist in investigating and remedying complex cases involving financial abuse; and finally, identifying and responding to the gaps in services i.e., those interventions that are needed but not yet available to elder abuse victims.

NCEA in collaboration with the Administration on Aging and the Department of Justice will convene a National Elder Abuse Policy Summit in Washington D.C. in December, 2001. The invitational working session will address many of the above listed issues. It will result in a prioritized Action Agenda which will serve as a road map for making change and thus addressing these problems. The following are among the topics currently under consideration for the Summit. These were developed from recommendations provided through a major survey of experts in the field:

1. **Public Awareness** – How should federal, state, and local public and nonprofit agencies and resources be tapped to allow for better public education and awareness?

2. **Federal Funding** – In what ways can we improve federal funding for APS, elder abuse prevention efforts, services, perpetrator and caregiver interventions/supports, etc?

3. **Federal Policy Barriers** -- Which existing federal laws/programs that could be serving elder abuse victims/caregivers aren't because of legal, policy, or standard practice barriers? How can these barriers be changed? What new federal legislation might be needed?

4. **Increase Prosecution** – Given the Department of Justice work as a baseline, what else could be done to increase prosecution of elder abuse perpetrators?

5. **Promote Collaboration** – What else can be done on a national level to promote cross-disciplinary collaboration? How can/should existing confidentiality laws/policies be changed to improve our ability to identify elder abuse victims, provide coordinated services to them, and prosecute perpetrators?

6. **Health Care Professionals Training** – What can be done on a national basis to improve the elder abuse knowledge of health care providers?

7. **APS Enhancement** – What can be done to improve and ensure quality standards guide APS practice across the states?

8. **Filling Service Gaps** – What services are needed and not available? Specifically, what can be done on the federal, state, and local levels to create

more and/or improve elders' access to existing emerging/transitional shelters/housing, mental health interventions, and in-home services?

9. **Research on Intervention/Prevention Strategy Effectiveness** -- What else can be done to promote/fund such research?

E. How the Committee Could Support and Enhance Services for Elder Abuse Victims

There are several concrete actions the Committee could initiate now that would significantly bolster the elder abuse field: First, in preparation for Older Americans Month next year, the Committee could begin the development of a joint resolution which would establish a national elder abuse prevention week. Past experience indicates that such declarations encourage governors to follow suit and spear head many state and local public education and collaborative activities. Second, the Committee could offer its support to the efforts currently underway to restore funding for the Social Services Block Grant. At least 31 states depend on SSBG to fund their adult protective program and services for elder abuse victims. SSBG is the largest source of federal funding for adult protective services. Third, additional funding for the Older Americans Act, Title VII Elder Abuse Prevention Activities could be used to develop more collaborative interventions at the state and local levels. Likewise, enhancements to the Long Term Care Ombudsman and legal services components of Title VII would further strengthen the elder abuse safety net formed by these programs.

Finally, as noted above, the National Elder Abuse Summit's Action Agenda will be published later this year. We hope you will designate members and/or staff to participate in the Summit's deliberations. And as we proceed to implementation of the recommendations, it is clear that Congressional leadership will be required to move on key aspects of the policy agenda. We would hope to return here in the first part of the new year, discuss the Action Agenda with you and further clarify exactly how the National Center on Elder Abuse will continue to advocate for the needed actions and collaborate with the Committee on priority issues.

On behalf of the partner organizations comprising the National Center on Elder Abuse, we look forward to working with you in meeting the challenges of elder abuse.

The CHAIRMAN. We would like to hear next from Joanne Hopper. Thank you very much for being with us.

STATEMENT OF JOANNE HOPPER, FRUITLAND, ID

Ms. HOPPER. Thank you for having me.

My statement is on power-of-attorney abuse and caregiver abuse, two issues.

I had a massive heart attack and realized that I was going to have to have power-of-attorney because I was incoherent. I selected my son, who had always been an excellent kid, trustworthy and so on. I thought everything was fine, and all of a sudden, they asked if they could move into my home.

They built an addition on, and before it was finished, they left it, because they could not get along with the builder. However, they had used my signature for the loan because he had power-of-attorney. They also had chalked up a lot of bills. They had somebody come in and get me up in the morning and put me to bed at night. I wondered how they were paying for it—well, I was paying for it.

They mortgaged a home I had in town. I just could not figure out how somebody could go into a bank and sign my name and walk out with $34,000 and not be accountable.

Anyway, they have completely and totally wiped me out financially. If I have to go to the grocery store to buy groceries, there is not a cent for me to do that. I have been eating Meals-on-Wheels.

It has been turned over to the prosecuting attorney, and so far it is just being considered a misdemeanor. I cannot understand. I am yelling, but nobody is hearing me, so I am going to yell some more.

Then I had caregiver abuse. I had to get a caregiver because the kids moved out. One day, I had to discuss a situation that was kind of against her grain, and she was very mad, got me up from a nap and sat me in this scooter that I am sitting on. She used a belt around my waist to transfer me from the bed or to the scooter or wherever, and that got caught on the armrest, and I was over like this—and I have an internal pump, because I have MS—it was caught, and my feet were all under, and she just flat up and left me that way.

I waited, and waited, and waited, and she did not come back. I carry a phone with me, and it was really hard—like an hour—for me to get the phone. Finally, I got it, called the operator—because my hands are curved, it is hard to dial—and called a friend to come and get me. She did, and we called adult protection—it just happened that I knew of adult protection through an attorney that I had; otherwise I would not have known about adult protection, and I think that that should be advertised—to see if I could get a new caregiver.

They could not get me a new caregiver, so a friend of mine is still helping me every day, and if things do not change, I will probably have to go to a nursing home in a month or two. Hopefully, things will change, but we just do not know.

I do not want to be a ward of the State. I had never planned on being a ward of the State, ever. I had enough money to last forever, but I guess mom's money was not too bad after all. It is really sad.

On power-of-attorney, I think there should be more than one person signing when that money needs to be used for whatever the person needs.

On the caregiver issue, really, that is just a hard situation. I do not know what to do. But you guys are smart.

The CHAIRMAN. Ms. Hopper, thank you so much. The committee really appreciates your coming, and we thank Senator Craig for making the arrangements for you to be with us and tell your story. It is a tragic story, and we apologize that it happened to you, but I think that by your telling it, it helps us look for solutions so that it does not ever happen again.

[The prepared statement of Ms. Hopper follows:]

TESTIMONY OF JOANNE HOPPER

Before the

SENATE SPECIAL COMMITTEE ON AGING

JUNE 14 2001

My name is Joanne Hopper. I was born in California and raised in Eugene Oregon by wonderful parents on a small country farm. I graduated from high school, went to cosmetology school and had my first hair salon when I was 19.

I met and married my husband when I was 23 years old. We had two children, a boy and a girl.

We had the world by the tail and we decided we wanted a ranch. We moved to eastern Oregon to pursue our dream. We found 160 acres and started building our herd of cows, raised alfalfa and grain.

At the age of 44, in 1981, I was diagnosed with Multiple Sclerosis. My world tipped upside down. Tragedy in my marriage caused a bitter divorce, but I kept the ranch and finished out seven foster boys and six foster girls. Multiple Sclerosis was slowly deteriorating my body. I fell and broke both hips, suffered a massive heart attack and found myself in and out of hospitals and nursing homes for rehab.

I was at a point where I had to sell the ranch and move to town because I was starting to depend on caregivers, as all of my children were grown and all over the U.S. Multiple Sclerosis doesn't care whether you like it or not, it slowly cripples you more and more, making you depend on care givers more and more. Some caregivers are excellent and some are horrid.

My son saw this and told me he and his family would like to build onto my home and watch over me. As the end approached, they couldn't get along with the builder and moved. This left me with a debt of another home. I put my home up for sale and went to a nursing home to collect my thoughts and decide what I was going to do.

I had given my son a Power of Attorney that he grossly abused. While I was in the nursing home I kept asking for a telephone to call my daughter. The employees kept telling me I would have to wait until the head nurse returned from her days off. I did not sleep for forty-eight hours waiting for her! I was so upset that after every meal I would throw up. Finally, I was able to get a hold of my daughter. I had to go through proving that I was in my right mind.

I finally was looking at coming home and getting yet **another** caregiver. First, I called the realtor who told me **both** of my homes were in foreclosure due to the abuse of the Power of Attorney that I had given my son.

I found a caregiver and was finally on my way home. First off, I sold everything I owned in order to get foreclosure payments caught up part way. The caregiver brought in another caregiver that I didn't know as she wanted to pursue other things.

The new caregiver suggested that we put in a certified family home. I thought how wonderful as she had been on welfare and she would run this home, also providing my care. She ultimately left me stranded on my scooter, left me unattended and walked off. I called a friend to come and help me and Adult Protective Services to see about a new caregiver. Adult Protective Services called the police who ordered the caregiver out of my home.

Because of the Power of Attorney abuse, I no longer have money for groceries, toilet paper, or "anything else", let alone money to hire another caregiver! Because of the Power of Attorney abuse and caregiver abuse I am no longer in control of my own destiny.

As of this writing, I no longer know how things are going to come out. One day I am way high and the next I am flat on my face.

I am hoping my story will lead to an organization or program that can financially and materialistically aid myself and others through a rough time. I am no longer able to work and through no fault of my own this has occurred.

The CHAIRMAN. We have a vote that has just started, but I think we can hear from Dr. Laura Mosqueda. So if you would like to go ahead and give your statement now, Dr. Mosqueda, we will hear it.

STATEMENT OF DR. LAURA MOSQUEDA, DIRECTOR OF GERIATRICS, UNIVERSITY OF CALIFORNIA, IRVINE, CA

Dr. MOSQUEDA. Good morning, Senator Breaux, Senator Craig. Thank you for inviting me. I am very grateful for the invitation.

My name is Laura Mosqueda. I am a family physician and geriatrician at the University of California, Irvine, UCI, where I am the Director of Geriatrics and an associate professor of family medicine.

While I have one foot in academics, my other foot is planted firmly in the trenches, which allows me to see that we have great needs in the areas of research and education, but we have very urgent needs in the area of care for individuals who are affected by abuse.

I am the principal investigator of a project funded by the Archstone Foundation, where we have formed a medical response team for our local county, Orange County in California, for elder abuse.

Our team responds to requests from Adult Protective Services, the district attorney's office, and law enforcement agencies to help them look at medical aspects of elder abuse. At this point, we have been involved in over 100 cases, and I have done many dozens of house calls with APS workers, looking at possible abuse cases.

We are about halfway through this 3-year project right now, and there are a few points that I would like to share that our team is learning as we go along.

One is that APS workers are often doing a very heroic job at low pay for the degree of training they have and the work they are doing, and they have no medical backup whatsoever on a regular basis.

We have learned that geriatricians and psychologists or psychiatrists can and should be integral members of an elder abuse multidisciplinary team.

We have learned that police officers and detectives are often frustrated in dealing with the elderly. They have received little training; they do not know what to do when they are trying to interview a person who may be a victim and who suffers from, say, dementia or severe depression, or somebody who has trouble with hearing or vision, leading to a frustrating experience for all involved.

We have learned that physicians are terrible at detecting, documenting, and reporting elder abuse.

I have also learned that our system of response to elder abuse is fragmented and sporadic and truly inadequate. I think that in our level of understanding of elder abuse, we are probably 20 years behind that of child abuse. We know little about prevalence and incidence, risk factors, markers. As one of the other Senators mentioned earlier, how do we know when we can distinguish a bruise that has been caused by an accident from something that was inflicted? The same goes for issues like malnutrition, pressure sores; so many of the diseases that are common in the elderly can either mimic or mask markers of elderly abuse. And we know little about the consequences of elder abuse.

We have a great opportunity to learn from our colleagues in child abuse and the domestic violence arenas to understand what models have been successful so that we do not have to reinvent the wheel. We can take those models and see how they can be modified and applied to elder abuse.

I am sure that we will find that the causes of elder abuse are just as complicated and multifaceted as the solutions will be.

There are some agencies and organizations that have begun to take action in the area of elder abuse. The National Institute on Aging recently commissioned a panel from the National Academies to help set a research agenda in the area of elder abuse. The Department of Justice has sponsored a forensic roundtable on this issue. The American Geriatric Society of which I am a member has now incorporated elder abuse into its core lecture series, and there is the beginning of an interest group within the organization.

But as you know, there are not enough geriatricians to go around in the country, and there is even a smaller subset interested in elder abuse.

As recommendations come forth from these different panels, agencies, and organizations, there will need to be new funding to implement the recommendations. I think Congress should make every effort to understand the financial cost of the problem as it currently stands—how much did it cost in the examples that we have heard about to have to go and look at nursing home care? How much is this costing Medicare and Medicaid when we are not catching it at an earlier phase or preventing abuse from happening to begin with?

I think your timing for holding these hearings is excellent. You can capitalize on a growing interest across the country. It is amazing to me that we see a few pilot projects popping up here and there across the country, spearheaded by a variety of professionals, spearheaded by APS supervisors, police officers, prosecutors like Mr. Greenwood, health care providers—and all of us really have one common motivation. We know that elders are being victimized, and we know that our current system is failing them.

I very much appreciate your insight and courage in holding these hearings. I think it is important for your leadership to bring this topic to the attention of Congress and to the attention of our Nation as you have done with other important issues for seniors. We need your leadership to develop a coordinated, comprehensive legislative approach and funding that support the research, education, and service needs.

Thank you.

The CHAIRMAN. Thank you very much, Dr. Mosqueda.

[The prepared statement of Dr. Mosqueda follows:]

Senate Special Committee on Aging

Saving our Seniors: Preventing Elder Abuse, Neglect and Exploitation

June 14, 2001

Testimony of Laura Mosqueda, M.D.

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Thank you Chairman Breaux, Ranking Member Craig, and other members of the committee for inviting me to submit testimony on this important bipartisan issue. I appreciate your leadership in raising awareness of elder abuse and neglect, and in taking the time to understand what must be done to understand and eliminate this terrible problem.

PREAMBLE

- We have little understanding and knowledge about the mechanisms and consequences of elder abuse. There is an **urgent need for research** that address practical questions:
  - How common a problem is it?
  - Who is most likely to be a perpetrator of abuse?
  - Who is most likely to be a victim?
  - How do we diagnose elder abuse?
    - What are the signs and symptoms (fractures, pressure sores, bruises, etc.)?
    - How may they be distinguished from unavoidable consequences related to diseases of the aged?
  - What is the most efficient and efficacious way for people in social services, health care, and criminal justice systems to address and interact on this problem?

- Inadequate resources are allocated to address the social, legal, and medical aspects of elder abuse. **New funding is needed** for research, education, and services
  - Research funding is woefully inadequate
  - Health care providers (often in the best position to recognize abuse) receive little or no training in elder abuse
  - Demonstration projects that provide services for intervention and prevention require significant new funds over a long period of time (at least 4 years) to measure their impact

- There is little collaboration between medical and legal professionals and few medical experts to testify when needed

- There is a **demographic imperative** to systematically address the problem. If we continue on the current path of relative inactivity, abuse and exploitation will increase and we will not have the knowledge or the resources to address it.

CURRENT KNOWLEDGE

Lack of Research

We know very little about elder abuse. There have been few scientifically valid studies that help us understand its prevalence, incidence, causes, and consequences. We lack an understanding of the "big picture" issues (prevalence, incidence, risk factors, prevention) as well as the issues that relate to an individual person (bruises, fractures, malnutrition, dehydration, depression). Unlike child abuse and domestic violence, there has never been a well-done, nationally representative survey of elder abuse. The samples included in most studies of elder abuse have been small, unrepresentative, and non-random. Further, very few studies have used direct information from the victims or perpetrators, relying instead on information from social service agencies or other professionals.

This is an extraordinarily difficult topic to study: many of the victims are physically and/or cognitively unable to speak for themselves; indeed, many are not even able to comprehend that they are being abused. Perpetrators, too, may be suffering from illnesses that impair their physical, cognitive, or emotional function. Too often we witness a caregiver with significant physical impairments and depression trying to care for a spouse who is severely demented and requires help with almost all activities of daily living.

Without a sound understanding of all aspects of this problem, there is no guide that enables our nation to develop effective solutions. The National Institute on Aging requested the National Academies to convene a panel to develop research recommendations in the area of elder abuse. This panel has begun its meetings and will be publishing its recommendations in 2002. New funding will be needed across many government agencies if the recommendations are to be implemented.

Complexity of the Issue

Elder abuse is a complex, multifaceted problem. Elder abuse can encompass not only physical abuse, but also sexual, psychological , and financial abuse, as well as neglect, self-neglect, abandonment, and abduction. Further, there is no accepted definition of what constitutes abuse or neglect; virtually every published article, state legislature, and service provider organization has created its own criteria. A second complicating factor is that many common conditions in frail older adults (bruises, fractures, pressure sores, depression) mimic and/or mask the signs and symptoms of abuse. There is a need to develop criteria that help distinguish unavoidable/accidental injuries from avoidable/inflicted markers of abuse. We need sensitive and specific tools that accurately screen for signs and symptoms of elder abuse. It is likely that different tools will be needed in different settings; for example, the screening tool used in an emergency room will be different than one used in an adult day care program or by medical examiners.

We may find that characteristics inherent to the perpetrator (e.g. overwhelmed, drug-addicted, sociopathic) are even more important than those inherent to the victim (e.g. demented, physically dependent, agitated). The importance of the social context in which the abuse occurs should not be underestimated. Abuse may occur across all socioeconomic strata and in all settings (home, community, long term care). These complicated, dynamic, interacting characteristics of the victim, perpetrator, and social situation make this a difficult topic to study. This should not deter us from doing the studies necessary to answer these questions and formulate responses, however, as this problem is too important to ignore. Instead, it should spur us on to support new funding for research that will begin to chip away at these complex issues, and break them down into answerable questions.

INADEQUATE RESOUCES TOWARD A SOLUTION

Funding

Our nation allocates only a small amount of money toward the clinical, research, social, legal, and educational aspects of elder abuse. Despite the large and rapidly

expanding population at risk, funding for elder abuse represents a miniscule fraction of the funding for child abuse, domestic violence, or other significant public health problems. Due to the complexity of the topic, interagency cooperation in exploring and funding this issue is particularly appropriate. Experience shows that unless *all* systems (Adult Protective Services, health care professionals, law enforcement, district attorneys, social service agencies, etc) are working in synchrony there is little chance that perpetrators will come to trial and little chance that victims will receive the relief they need to recover. There has already been the beginning of collaborative work between the Department of Justice and the National Institute on Aging which has proven promising.

Pilot Projects and Models

Forensic Centers

Forensic Centers have proven to be effective in child abuse but, to date, a specific forensic center on elder abuse does not exist in the United States. Funding for pilot projects such as forensic centers that are practical and reproducible and include a research component will help us determine if models that are successful in other forms of family violence will work in the realm of elder and dependent adult abuse.

Multidisciplinary Teams

Case studies and fledgling efforts around the country suggest that comprehensive, multidisciplinary teams may be effective in addressing elder abuse. Despite promising preliminary data, there has been no significant government funding for the support or evaluation of such efforts. We know that these models, which bring together social service, medical, and criminal justice personnel are effective in the care of child abuse victims. They ought to be adapted to the special needs of elders and adults with disabilities and studied for effectiveness.

At the University of California, Irvine College of Medicine we have formed a medical response team that provides consultation to Adult Protective Services, law enforcement, and the justice system. This three-year project, funded by the Archstone Foundation, is already proving to be of benefit: the physician and psychologist on the team assist in determining whether abuse has occurred and have testified in several cases.

Training

There is an inadequate number of geriatricians in the United States to care for the frailest seniors. Few geriatricians receive any formal training in the area of elder abuse. There are only a handful of geriatric forensic experts in the United States. With funding from the California Office of Criminal Justice Planning we have developed a two-day course for geriatricians on elder abuse which is taught by geriatricians, a pediatrician, a prosecutor with a district attorney's office, the head of a county Adult Protective Services unit, and a psychologist. Courses like this are rare, however, due to difficulty in obtaining funding, the paucity of research data on which to base a curriculum, and the general lack of interest among health care providers in this issue.

If funds were made available for research and training in this area, it would increase the ability of experts to train others, raise awareness, and improve detection, diagnosis, reporting, and testifying in cases of elder abuse and neglect.

Intervention and Prevention

Some of perpetrators of abuse who are violent, dangerous and/or who knowingly withhold necessary care should be prosecuted. One common lament of law enforcement officers and prosecutors is the lack of medical professionals who are knowledgeable in diagnosing abuse, and who are willing and able to help these cases go to court. Problems include failure to detect and diagnose, inadequate documentation, a paucity of expert witnesses (especially physicians with adequate training in geriatrics and forensics who are willing to testify), and a resistance to interacting with the criminal justice system.

There are other perpetrators, however, who are genuinely well-meaning but are overwhelmed or unable to provide the level of care needed by the victim. For these families, adult day care programs, respite programs, and in-home assistance may be the best interventions to help the victim and keep the family whole.

Other Vulnerable Adults

While the focus of this hearing is on older adults, there is another group of adults who are frequently abused and unable to advocate for themselves: adults with disabilities (so-called "dependent adults" in many states' laws). In most states, the same laws which

protect older people also protect persons with disabilities. People with developmental disabilities, such as cerebral palsy with mental retardation, Down Syndrome, and a host of other genetic disorders that impair cognition to varying extents are particularly vulnerable to becoming victims of abuse and neglect. The statistics are appalling: 60-80% of women with a developmental disability are victims of sexual abuse; half of these women are subjected to repeated episodes (>10) of sexual abuse; 20-40% of men with a developmental disability are victims of sexual abuse.

Because the same laws and many agencies that serve abused seniors serve persons with disabilities, research and education should target both groups simultaneously. Federal agencies that fund research in the field of disability, such as the National Institute on Disability and Rehabilitation Research, should devote some of their funding to this topic.

DEMOGRAPHIC IMPERATIVE

In the next 30 years, the number of people aged 65 and over will double. The fastest growing segment of the population is those over age 85. With advances in self-advocacy and care, men and women with disabilities are living longer lives. However vulnerability (due to dementia, depression, physical disability, mental retardation) increases with age and increases an individual's likelihood of being abused or neglected. With a greater population of vulnerable adults, abuse is likely to increase unless we invest in a systematic program of research, prevention, support and intervention.

CONCLUSION

We have a choice to make on behalf of the most vulnerable members of our society, most of whom are unable to advocate for themselves: we can choose to ignore that abuse is occurring and shake our heads when we hear about the occasional gruesome report, or we can decide to devote the necessary time and money and to enact the necessary legislation to make this nation a safe place for all of our citizens to live without fear and humiliation and pain.

The CHAIRMAN. We have two recorded votes going on now on the Senate floor, so the committee will take a short recess, probably 10 minutes or so, and then come back to complete the testimony of the panel.

The committee will stand in recess.

[Recess.]

Senator Craig [presiding.] Thank you all very much for your patience. The committee will reconvene.

Chairman Breaux, because of the length of the vote, had to go on to another engagement, so in the bipartisan fashion in which we enjoy operating this committee, we will proceed.

Let me turn now to Paul Greenwood, Deputy District Attorney and head of the Elderly Abuse Prosecution Unit in San Diego.

Paul, welcome to the committee. Please proceed.

STATEMENT OF PAUL R. GREENWOOD, DEPUTY DISTRICT ATTORNEY AND HEAD, ELDER ABUSE PROSECUTION UNIT, SAN DIEGO, CA

Mr. GREENWOOD. Thank you, and good morning, Senator Craig. It is a real honor to be invited to speak here.

I have the privilege of heading the Elder Abuse Prosecution Unit in the San Diego District Attorney's Office since January 1996. My boss, Paul Pfingst, probably was a visionary back then, when he felt that it was important to devote resources in this area.

I have to confess, Senator, that when I was asked to do this job in January 1996, I had never heard of the term "elder abuse" and did not really know where to begin.

But over the last 5½ years, being, like Dr. Laura Mosqueda here, basically on the front line of the trenches, my eyes have been opened, and if there is one thing that I would urge you to take back to your fellow Senators on this committee, it is that I believe this issue is one of the top three issues of crime in this country in the next 5 years, and it is only going to escalate and get worse.

Just by way of example to show you that I am in the trenches, last Friday, I was prosecuting a case involving a 73-year-old female in a residential facility. She has a mental age of 7, and she was sexually assaulted by a male employee of that facility who is currently on active felony probation for child molestation.

That is the kind of case that we grapple with on a daily basis, Senator.

In 1996, I prosecuted 17 felony cases. In 1997, it went up to about 37; in 1998, to 75; in 1999, to 97; and last year, we did 124 felony cases of either physical or financial elder abuse. This current year, we anticipate well over 200 felony case.

Now, I am not proud of those statistics, and I believe that they are just the tip of the iceberg in the County of San Diego. But I think it demonstrates that much of the negativity that seems to surround the prosecution of elder abuse is a myth, and we have been able to demonstrate through the lessons learned from domestic violence and child abuse prosecutions that these cases can and should be investigated and should be prosecuted.

You mentioned that in your home State of Idaho, there were 2,100 cases last year. I would imagine that probably fewer than 40 of those cases were prosecuted.

So we have got to do a lot more, but I think it is at the grassroots-level, Senator, where this is going to happen, and I am grateful to you for bringing out Joanne from your home State just to give us all a sense of what is going on in the communities.

There are four things that I can basically share from the years I have had prosecuting these cases as being lessons that we have learned.

First, no agency knows every answer, and we have benefited from a multidisciplinary approach. We meet very regularly with Public Guardian, county mental health, adult protective services—and I cannot sing their praises enough; they are so underappreciated in this country, and people just do not know what they do. We have heard about child protective services, but people need to know more about what adult protective services does. We meet with them; we meet with paramedics, fire, police, sheriffs, and the medical community. This is the way to go, and I think prosecutors have a wonderful opportunity to be the catalyst in the local counties to actually bring these agencies together.

Second, we have got to encourage every elected prosecutor who runs either a county prosecutor or a district attorney's office in municipalities in the major towns and cities of this country to designate at least one prosecutor in that office to be what we call a vertical prosecutor in the area of elder abuse.

Sure, these cases are sometimes complex, are sometimes very difficult, but because we have trained prosecutors to know how to prosecute child abuse and domestic violence cases, it does not take much more to train prosecutors in the area of prosecuting elder abuse.

Dealing with areas of competency—how do I prove a case where my victim is suffering from severe dementia or Alzheimer's or stage 5 Parkinson's—there are ways around it, and getting vertical units I believe is the way to go.

Third, we need to develop a national training program for first responders of elder abuse. Every line of police and deputy sheriff, every paramedic and every firefighter in this country needs to have a course on elder abuse training and awareness. So many cases are going undetected, Senator, when paramedics and firefighters and even police officers go into a home and simply fail to recognize that if you leave an elderly widow in her bed with feces and urine and bedsores, that is a crime. They are trained not to look at it as a crime yet. We have got to teach our first responders about that issue.

Fourth, we have got to look into the area of legislation. I agree with the Senator who was here earlier this morning in the sense that we do have sufficient laws pretty much, but there are some areas that we can develop.

First, we can develop tougher laws on background checks for all employees and care providers for seniors in this country so that the case I just described will never happen again.

Second, we need to extend the group of mandated reporters who are obliged by law to report these cases.

And there is a side issue—I think we need to sit down with the financial institutions of this country and make them far more aware of their responsibilities to the elders and seniors of this

country, because so many financial abuse cases start in the banks and in the credit unions and do not get reported as being suspicious, and they need to do that.

If I may just take a couple more minutes of your time, I think we need to provide mandated training for all first responders. I think we also need to provide the judges of this country with courses in sensitivity to deal with cases involving elderly victims that come into their courtrooms.

Finally on that issue, I think that we need protection for civil attorneys in this country to allow them the freedom to report cases of suspected elder abuse where their own clients are being abused. I know of many civil attorneys who wrestle with this problem of confidentiality, and they would like to call me and tell me that they feel they are violating the ethics of confidentiality even though they know that their own client is being unduly influenced and exploited by somebody else.

So I am heartened and encouraged, Senator, by the fact that you have spearheaded this hearing today. I hope this is the start of something nationally. I must convince you, though, that this is grassroots-level. It starts in the counties of this country where local law enforcement and county prosecutors sit down and grapple with these issues, and it can spread from there.

Thank you.

Senator CRAIG. Paul, thank you very much. Your testimony is extremely valuable.

[The prepared statement of Mr. Greenwood follows:]

Statement of Paul R. Greenwood, Deputy District Attorney,
Head of Elder Abuse Prosecution Unit, San Diego DA's Office

Good morning, Mr Chairman and distinguished members of the Special Committee on Aging. My name is Paul Greenwood, and I am head of the San Diego District Attorney's Office Elder Abuse Prosecution Unit. I am also chair of California District Attorneys Association Elder Abuse Committee. It is an honor to be invited to appear before you and share my observations and perspectives as a prosecutor who has dealt with the varied issues of elder abuse prosecution for the past five years.

When District Attorney Paul Pfingst asked me to start an Elder Abuse Prosecution Unit in 1996, I confess that I had never heard of the term Elder Abuse nor had I prosecuted such a case. California had created an elder abuse law back in 1986 but it was little known by law enforcement and seldom used by prosecutors. By the end of 1996, I had filed 17 felony cases, in 1997 we prosecuted 37 cases, in 1998 we filed 75 cases, in 1999 there were 97 cases and last year we had over 120 felony elder abuse prosecutions. Our unit has grown from one prosecutor in 1996 to a staff of eleven – including five full time prosecutors, one investigator, two victim witness advocates and three support staff.

It is my belief that elder abuse will become one of the most serious issues facing law enforcement and prosecutors in this country within the next five years. As our aging population continues to expand, we will unfortunately see a large increase in the criminal cases in which seniors are targets of either physical or financial exploitation. However, we have a tremendous opportunity now to equip our law enforcement agencies to anticipate such an increase and help them to be ready to respond effectively and swiftly.

In the past two years, I have had the opportunity to travel to various parts of this country to assist with training at a local level. Response to elder abuse cases is currently varied and inconsistent. In some states participation by local law enforcement and prosecuting agencies in reacting to elder abuse crime is almost non-existent. I have had many conversations with committed Adult Protective Services caseworkers who are clearly very frustrated by the lack of response from their local police or sheriff or prosecutors. In other states, law enforcement and prosecutors are taking a lead in defining investigative and prosecutorial methods to hold the perpetrators of elder abuse accountable. What is needed is a uniform, consistent training which is available to every law enforcement officer and county, state and federal prosecutor. We urgently require a national curriculum on elder abuse training which can be given in a practical, hands on manner to officers and prosecutors who will be able to understand some of the complexities and challenges that we face when dealing with elderly crime victims.

Over the past five years I have prosecuted various elder abuse crimes including murder, rape, kidnapping, neglect and theft of life savings. Many of my victims have been in their eighties and nineties. Many have been inflicted with Alzheimer's disease or other forms of dementia. Such cases present major hurdles, but I am here to tell you that given the appropriate commitment, resources and passion on the part of law enforcement we can and will overcome such hurdles. To help us understand how we can collectively become

more effective in our response to the expanding number of crimes being committed against our seniors, I would like to highlight several areas that appear to have worked in our unit:

1. **We need to recognize the importance of developing a multi-disciplinary team [MDT] to fight elder abuse.**

When I started prosecuting these cases in 1996, I was fortunate enough to work in a County that had already established a MDT. Thanks to a very active Adult Protective Service Agency, Public Guardian's Office and County Mental Health Agency there was already in existence a group called F.A.S.T [Fiduciary Abuse Specialist Team] that met monthly to discuss cases of financial abuse. I was welcomed warmly to the first meeting and my participation in that group has taught me the value of multi-agency input and discussions. Ultimately, the decision whether to file a criminal case rests with the individual prosecutor,but for that case to reach the prosecutor often takes a team effort. Traditionally, law enforcement has been reluctant to sit in a room with other agencies who might appear to be more "socially" minded. If we in law enforcement are to have an impact in the criminal justice system in prosecuting elder abuse cases, then we must start by recognizing the important role that such agencies as Adult Protective Services play.

It is my experience that in a county where there is a MDT for elder abuse, there is also the groundwork for an effective law enforcement response to the crime of elder abuse. In San Diego I have had the pleasure of working alongside Adult Protective Services to promote a public awareness campaign, appear on radio and television programs to discuss elder abuse issues and to participate in discussions about potential criminal cases. I know of at least two counties in California where District Attorney Elder Abuse Investigators are being paid for out of the APS budget – a clear sign that MDT's work!

In San Diego I have the opportunity four times a year to chair the Elder Abuse Council meeting. Representatives from over 30 different agencies come together in our office – police, sheriff, APS, Public Guardian, Coroner's Office, Probation, City Attorney, Attorney General, County Mental Health, Fire & Paramedics, etc. Our common goal is to help make San Diego a safer place for seniors and to work collaboratively on solving some of the problems that prevent cases being reported and investigated.

2. **We need to encourage the establishment of vertical prosecution units for elder abuse.**

About twenty years ago, we realized that we needed to train our prosecutors how to handle child abuse and domestic violence criminal cases. As a result, most metropolitan prosecuting agencies now have teams of prosecutors dedicated to prosecuting such cases. We need to do the same with elder abuse cases. There are dynamics in elder abuse crimes that require specialized training for prosecutors. For example, how do we respond to a situation in which the elderly victim is in the early stage of dementia and the perpetrator has not yet been arrested? By the time that the defendant is apprehended, the victim may be suffering from moderate to severe dementia and is unable to recall the events that led

to the criminal act. The victim may in fact be unable to qualify as a competent witness. Do we dismiss the charges against the defendant or are there other ways to prove the case? How do we handle a case in which we have a bedridden 90-year-old victim who is unable to come to court? How do we deal with a situation of multiple victims from a residential facility aged between 85 and 95 who have had their personal effects and money stolen by a former security guard of that facility? What about the case of the 78 year old widowed mother, severely beaten by her 49 year old son, who now does not want to testify against her son and who has made it clear that she will not support the prosecution?

These are real problems with which we are grappling daily. During the past five years we have learned through trial and error that there are methods to overcome these issues. That is the benefit of having a vertical unit and we must ensure that elected prosecutors throughout this nation understand the importance of creating such resources within their offices. If you come to our unit we will be able to show you the wheelchairs, the walkers, the oxygen machine, the hearing device, the specially equipped van, and even a special waiting area for our seniors – complete with recliner, sofa, television and soft lighting. These are the things that they do not teach you at law school, but which are so important to our elderly witnesses. It also sends out an important message to our community – the DA cares about seniors.

California now has at least seventeen counties in which there is a vertical elder abuse prosecution unit. It is to be hoped that other states will follow suit.

3. We need to provide the resources for our police to become better first responders to elderly crime victims.

Just as we need specialized prosecution units to handle these cases, so we need to create police teams that are properly trained to respond to situations where the crime victim is an elder. San Diego Police Chief David Bejarano realized this after seeing the emphasis that the District Attorney Paul Pfingst was placing on elder abuse prevention and prosecution. As a result, Chief Bejarano created the San Diego Police Elder Abuse Investigation Unit last December, consisting of six detectives and one sergeant. After the backlog of uninvestigated financial abuse cases have been cleared it is anticipated that this team will assist in the training of officers at the various precincts around the city and will provide support for a first response to a location where there is an elderly victim. The quality of the first response is critical and often determines whether a criminal report is taken and whether a detective is assigned for follow up work. A well-trained and prepared officer will be able to spot the red flags that often accompany physical and financial elder abuse cases. Such an officer will not be deterred even if the victim appears to be confused or forgetful.

First responder training should also include paramedics and fire personnel. Often it is a paramedic or firefighter that is called to a scene where a senior is in distress. If that individual has received the necessary training then he or she will make that important call to the local police or sheriff and thus preserve a crime scene. We were reminded last

October in our county of the importance of such training for first responders. An 85-year-old man was found dead in his house by his 81-year-old wife who called 911. Both police officers and paramedics responded. The wife told officers that she had seen a lady in the house prior to her husband's death. All of the responders dismissed her claims as delusional. The coroner's office and the deceased's treating physician were contacted by telephone. Because there was no sign of a forced entry or of a struggle, it was assumed that the death was natural and a waiver was obtained – avoiding the need for an autopsy. The next day, a representative from a bank called the family to alert them to unusual banking activities that had occurred since the man's death. The family contacted the police who in turn ordered an autopsy. The coroner found that the cause of death was strangulation and blunt force trauma. Subsequently, a female was arrested and charged with the murder of this 85-year-old man. Our unit is prosecuting that case.

4. **We need to draft new laws that will assist with the investigation and prosecution of elder abuse perpetrators.**

Many of our elderly victims are vulnerable and deserve greater protection under the law. We should consider the following areas for possible implementation of new laws:

a. Extensive background checks for all care providers of elders
b. Expansion of the list of categories of mandated reporters of elder abuse and an increase in the penalty for failure to comply with the mandated reporting
c. A lifting of confidentiality restrictions that currently prevents many civil elder law attorneys from reporting suspected cases of financial elder abuse of their clients to law enforcement
d. Compulsory training for all sworn peace officers in elder abuse awareness and investigations
e. Creation of a curriculum for training judges to understand the dynamics of elder abuse

Mr Chairman, I appreciate being given this opportunity to share my perspective as a prosecutor. It is my privilege daily to enter a court room and endeavor to seek justice on behalf of a generation that has been called by some "our finest generation." With that privilege comes problems and obstacles, but I am optimistic that we are facing the challenges and that we are sending the right message to potential perpetrators of elder abuse. Today's hearing is a huge step in this nation's collective response to the growing problem of elder abuse. The United States owes so much to the millions of seniors in this country who have given selflessly for the greater good of the country. We owe it to them to make this country a safer place for people to grow old with dignity, respect and protection.

Senator CRAIG. Now let me turn to Ricker Hamilton, who is the Protective Program Administrator, Department of Human Services Bureau of Elder and Adult Services in Portland, ME.

Please proceed.

STATEMENT OF RICKER HAMILTON, PROTECTIVE PROGRAM ADMINISTRATOR, DEPARTMENT OF HEALTH AND HUMAN SERVICES, BUREAU OF ELDER AND ADULT SERVICES, PORTLAND, ME; ON BEHALF OF THE NATIONAL ASSOCIATION OF ADULT PROTECTIVE SERVICES ADMINISTRATORS

Mr. HAMILTON. Thank you. Good morning.

It is an honor to be speaking with you, and thank you for your invitation, Senator Craig. I would like to submit my written testimony for the record.

Senator CRAIG. It will be made a part of the record. Thank you.

Mr. HAMILTON. I am a board member of the National Association of Adult Protective Services Administrators, or NAAPSA, as we are known. As a volunteer, nonprofit organization, our membership consists of senior administrator of State Adult Protective Services.

APS are those services provided to elderly and disabled adults who are in danger of abuse, neglect, or exploitation and who are unable to protect themselves and have no one to assist them. Most of these victims are unable to ask for our help.

Reports of elder abuse, neglect, and exploitation are increasing dramatically, but not the budget for Adult Protective Services. It is estimated that in the United States, 2 million older persons and persons with disabilities are abused each year. Sixty percent of the abusers are family members who isolate and intimidate their victims.

The American Academy of Family Physicians reports that "We are losing our elders to an epidemic rarely talked about or even acknowledged; an epidemic that leaves some ashamed, some afraid, and too many dead."

With minimal resources, APS programs all over the country have struggled to develop quality services for our most vulnerable adult citizens. Although great strides have been made by APS, we cannot possibly meet the increasing demand and complexity of the needs facing our clients without Federal leadership and resources.

I would like to also call your attention to the photos on the side of the room, which highlight some cases, but I would also like to review some cases investigated by APS.

In Louisiana, a 75-year-old woman was found wandering in front of her home and admitted to a hospital. The emergency room physician found that she suffered from diabetes, moderate dementia, and was missing four of her toes. The woman had been living with her daughter in an extremely unsanitary house with 37 dogs and 10 cats. It appeared that the dogs had chewed off the victim's toes.

Louisiana State law allows for the prosecution of elder abuse without the testimony of the victim. However, the judge dismissed charges filed against the daughter when the district attorney said that the victim was "too upset to testify." In Maine, an 88-year-old woman was financially exploited by her two nieces. After becoming her guardian and conservator, the nieces sold her home, her car, and everything else that was important to her. They divided the

proceeds and continued to steal her monthly pension from out of State, utilizing an ATM.

The Department of Human Services became her public guardian and removed the nieces as guardian and conservator. The local district attorney's office refused to prosecute but promised to do so if the public guardian received judgment against the nieces from probate court.

After a year of advocacy, a judgment was secured. The district attorney, however, refused to prosecute. The attorney general's office took the case, and both nieces were prosecuted. One niece received a 6-month jail sentence. Restitution is part of their probation.

In Nebraska, Adult Protective Services received a report of a 53-year-old woman with developmental disabilities who had been physically and verbally abused by her brother. A witness saw the victim's brother yell at her, slap her across the face, and drive away, leaving her lying in a fetal position on the ground. The APS investigation found that she had been physically abused by her brother for several years. The victim thought that if she told anyone, she would have no place to live. She had also been financially exploited by the brother as he was the payee for her Social Security checks; he had used the money to support his drinking habit.

The person who witnessed the abusive action would be willing to testify, but the county attorney refused to prosecute because the victim does not make a reliable historian and would not make a good witness.

The very limited funds available through The Older Americans Act, $4.7 million, are used primarily for elder abuse prevention and education. In other words, Older American Act funds are not used to support APS services in the States. Nor does this program address the needs of thousands of younger disabled persons, those under age 60, who are also victims of abuse, neglect, and exploitation.

The Social Services Block Grant is the only source of Federal funding that specifically provides funds for the delivery of adult protective services. SSBG has been reduced over the past few years from $2.8 billion to $1.7 billion, more than a $1 billion cut in these critical funds. And I understand that S. 501 is aimed to restore SSBG funds to $2.38 billion.

Last year, the U.S. Department of Health and Human Services reported expenditures of $4 billion to serve abused children. The Violence Against Women Act received approximately $200 million. Of the Federal funding available for victims of abuse, 93.3 percent goes to child abuse, 6.7 percent to domestic violence, and only .08 percent to elder abuse.

Child protective services, domestic violence agencies and related services need this level of commitment, but the contrast with funding available for APS is indeed stark and in fact troubling.

NAAPSA has made a number of recommendations, including: restore SSBG funds to $2.38 billion; earmark SSBG funds for protective services, including adult protective services; develop consistent definitions of abuse, neglect, and exploitation; provide seed money for an automated data collection system to develop national statistics, similar to the seed money provided to child protective services;

develop model enabling legislation for APS to combat the abuse of our elderly and persons with disabilities—there currently exists tremendous inconsistency among States, resulting in unequal protection under the law; provide funding for research efforts; encourage model programs and community partnerships; and finally, quantify the link between financial exploitation and the resulting high costs to public programs like Medicaid. Sadly, we all know the personal devastation.

In closing, our current generation of older victims has raised their families, made numerous sacrifices, endured hardship, and have done so much for America. Now too many of them are being abused. They need our help, they deserve your attention, and they have earned the right to be safe in their older years. The true measure of our society will be how we treat those who have spent their lives doing for others.

Thank you.

[The prepared statement of Mr. Hamilton follows:]

Senate Special Committee on Aging
Investigative Hearing on Elder Abuse, Neglect and Exploitation
Washington, DC
June 14, 2001
Testimony Provided by A. Ricker Hamilton
for the
National Association of Adult Protective Services Administrators

- Good morning.

  It is an honor to be speaking with you this morning, thank you for your invitation. I am a Board Member of the National Association of Adult Protective Services Administrators or NAAPSA as we are known. As a volunteer non-profit organization our membership consists of the senior administrators of states' Adult Protective Services systems. Adult Protective Services are those services provided to elderly and disabled adults who are in danger of abuse, neglect or exploitation; and who are unable to protect themselves, and have no one to assist them. NAASPA represents the interest of these programs, conducts national research projects relating to the abuse of vulnerable adults and provides training to state Adult Protection Administrators.

- Reports of elder abuse, neglect and exploitation are increasing dramatically but not the budgets for Adult Protective Services. It is estimated that in the United States, 2 million older persons and persons with disabilities are abused, neglected and financially exploited each year.

Most experts believe this number may be only the tip of the iceberg, since many victims are unable to report their abuse and have no one to do so for them. The American Academy of Family Physicians reports "we are losing our elders to an epidemic rarely talked about or even acknowledged. An epidemic that leaves some ashamed, some afraid and too many dead."

- Studies indicate only one out of every 14 cases of elder abuse is reported. Aging should be a gift, not a time of fear and deprivation. In the next twenty-five years, there will be an unprecedented growth in the number of our older citizens. By 2030, 20% of our population will be persons over age 65, more than twice their number in 1997.

- APS programs all over the country have struggled on their own, with minimal resources, to develop quality services for our most vulnerable adult citizens. These victims, who are mistreated in every way imaginable, are often unable to help or even speak for themselves. APS programs are serving the fastest growing population in the nation. Although we have made great strides, we cannot possibly meet the increasing demand and complexity of needs facing our clients without federal leadership and resources.

- I would like to cite some case examples of abuse, neglect and exploitation that were investigated by Adult Protective Services:

Connecticut

Mrs. T., was a 95-year-old widow who was admitted to the hospital in a semi-comatose state, suffering from dehydration and malnutrition. Her son, who had been her caregiver for the past ten years, refused to answer any questions about his mother's condition. A physician observed the son fondling his mother inappropriately and then punching and verbally abusing her. An investigation revealed serious neglect and possible sexual abuse by the son. Protective Services for the Elderly secured a restraining order against the son, became temporary conservator of the woman and placed her in a long-term care facility.

Illinois

Mrs. B., 68, had been in an abusive marriage for 30 years. Her husband isolated her from her family and friends, denied her access to money and did not permit her to make decisions. Upon admission to the hospital for surgery, Mrs. B. requested protective services. An Elder Abuse Program caseworker helped Mrs. B. be reunited with her family, move in with her sister, obtain a divorce, open her first checking account and receive half of her husband's pension. Her family expressed their gratitude, saying that without the assistance of the Elder Abuse Program, Mrs. B. would still be living with her abusive husband.

Iowa

Mrs. L., an 83 year old woman moved in with her son on the family farm following surgery. Eighteen months later, the woman's health had deteriorated to the point where her physician was recommending that she be placed in a health care facility. The woman's son had obtained both a voluntary guardianship and power of attorney for his mother, and had received in excess of $150,000 dollars worth of the woman's resources. This amount included case payments and the cancellation of a $40,000 loan he owed his mother. Adult Protective Services substantiated a dependent adult abuse report on the son, finding the son had used undue influence to get his mother, who was confused at the time, to sign the voluntary guardianship papers and power of attorney. A civil suit against the son restored the woman's resources.

Kansas

A 90-year-old woman and her 68-year-old daughter were being physically and verbally abused by the mentally ill granddaughter who lived with them. The two elderly woman were very afraid because the daughter was very volatile and threatening, had hit her mother several times, had brought strange men into their home who stole things, and had forged checks on her mother's account.

When police were called, the daughter would pull herself together long enough to convince them that nothing was going on, and then retaliated against the two women after the police left. The two women discussed suicide because they believed no one would protect them from the daughter. An APS social worker worked with the mental health center to get the daughter court ordered into the state psychiatric hospital for treatment. APS obtained a restraining order to keep the daughter away from the two women when she was released back into the community, and set up a corrective action plan in which the daughter could avoid criminal prosecution only if she had no contact with the two women, and continued to participate in mental health treatment. The worker found alternative housing for the two women so that the daughter would not know where they lived.

Louisiana

A 75-year-old woman was found wandering in front of her home and admitted to the hospital. The emergency room physician found that she suffered from diabetes, moderate dementia and was missing four of her toes. The woman had been living with her daughter in an extremely unsanitary house with 37 dogs and 10 cats. It appeared that the dogs had chewed off the victims' toes. Louisiana state law allows for the prosecution of elder abuse

without the testimony of the victim. However, the judge dismissed charges filed against the daughter when the District Attorney said that the victim was "too upset to testify."

Maine

An 88-year-old woman was financially exploited by her two nieces. After becoming her guardian and conservator, the nieces sold her home, her car, personal belongings and everything else important to her. They divided the proceeds and purchased travelers checks with some of the money. Her nieces even continued to steal her monthly pension benefits from out of state, utilizing an ATM. The Department of Human Services became her public guardian and had the two nieces removed as guardians and conservators. The local District Attorney's office refused to prosecute but promised to do so if the public guardian received a judgment against the nieces from the Probate Court. After many months of legal work, a judgment was secured. The District Attorney however refused to prosecute. The Attorney General's Office took the case and both nieces were prosecuted, one niece received a six-month jail sentence. Restitution is part of their probation.

Maine

A 78 year old mentally retarded woman had lived in the same house all of her life. Before her mother's death in 1972, her brother

promised their mother that he would not to place his sister in an institution. For almost thirty years she never left her bedroom, her bedroom door was locked from the outside. APS went to the home in response to an allegation that the brother was abusing his wife. The caseworker and police officer were aware of a rumor that another person lived in the home and pressed to see this person. What they discovered was a woman lying naked in a fetal position on the floor and weighing just 67 lbs. She was being fed a diet of crackers and yogurt. There was a badly soiled mattress on the floor, without sheets or blankets. The bedroom did not have toileting facilities. Of the 12 words she could speak, the three she said the most were " I hate you". Next door to her house was a group home that provided day care services for adults. The District Attorney, after reviewing the case, decided not to prosecute because of the familial relationship.

Nebraska

Adult Protective Services received a report of a 53-year-old woman with Developmental Disabilities who had been physically and verbally abused by her brother. The reporter witnessed the brother of the victim yelling at her, slapping her across the face, then driving away, leaving the victim lying in a fetal position on the ground. The victim had been residing with her brother since her

parents died. The investigation found that she had been physically abused by her brother for several years but she thought if she told anyone she would have no place to live. She had also been financially exploited by this brother, as he was the payee for her Social Security check and had used that money to support his drinking habit. APS found her alternate living in a group home, connected her with day service programs through the Developmental Disabilities System and found another payee for her Social Security Check. She is doing very well in her present surroundings and has been reconnected with siblings in another state who had not known about the abuse. The person who witnessed the abusive action would be willing to testify but the County Attorney refused to prosecute because the victim does not make a reliable historian and would not make a good witness.

Pennsylvania

Marge is a 78-year-old widow whose son had power of attorney over her affairs. Older Adult Protective Services discovered that the son had taken over $250,000 from her various accounts. He had purchased six brand new automobiles in addition to other items. Older Adult Protective Services contacted law enforcement and arranged for Marge's brother to be appointed her guardian. The automobiles were recovered and sold, with the money going

into Marge's account. The son has been evicted from her home and is the subject of a criminal investigation.

Texas

James is a 42-year-old paraplegic due to an automobile accident. He lived with his wife Sandra, who refused to take him to the physician or refill his medications, even though his bedsores were getting worse. Sandra initially refused to allow Adult Protective Services to see her husband. Law enforcement was called to help the APS worker gain access to James. James was taken to the hospital, at which point his wife relinquished all duties as his caregiver. He was placed in a community based alternative to nursing home care where he could receive 24 hour medical attention.

Utah

Mr. N., is a 33-year-old American Indian who suffered traumatic brain injury after being severely beaten and left to die by his attackers. Because of his brain injury he is unable to take care of basic activities of daily living or ensure his own personal safety, so he cannot be left alone. His family cares for him during the evening and weekends, but are not available during weekdays, as they work. Adult Protective Services arranged to have Adult Day Care

services, funded by SSBG, to provide for him during the day. Staff report that since his placement in Day Care he has "just blossomed."

Vermont

An 89-year-old woman who suffered from Alzheimer's disease was living in a licensed residential care home. Finding the woman's door locked, the head of nursing let herself into the room with a key and found the maintenance man having sexual contact with the victim. He had been having sexual relations with her for several months, even though she was incapable of giving informed consent. It appeared that he had preyed on other residents over the years.

Wyoming

Neighbors reported to Adult Protective Services that a 90 year old woman was being financially exploited by her attorney. He had convinced his client to cut herself off from all her relatives and write him into her will as her sole heir, in exchange for a promise to provide for her care. Attempts to help the victim were rebuffed due to her increasing confusion and paranoia. Following her death, Adult Protective Services confirmed that the attorney did receive a

large amount of money from the woman's estate. An ethics referral was made to the Wyoming Bar Association.

- The Social Services Block Grant is the only source of federal funding that specifically provides funds for the delivery of Adult Protective Services. SSBG has been reduced over the past few years from $2.8 billion to $1.7 billion, more than a one billion dollar cut in these critical funds! When states lose SSBG funds, APS often are among the programs frequently cut. It is urgent that SSBG funds get restored at least back to a level of $2.8 billion. SSBG funds support APS services for approximately 650,000 older and disabled adults. 31 states depend on these funds to provide protective services to victims like I just described.

These services include:

1. Investigation of reports of abuse, financial exploitation and neglect of vulnerable adults;
2. Taking immediate action to protect victims' safety and property; and also
3. Arranging for a wide variety of supportive services such as emergency housing, homemaker, food, medical and health treatment and other essential services.

- Adult Protective Services workers are frequently called upon to make critical, life changing decisions in complex and challenging situations. They are called

because many elderly and disabled victims have no one available or willing to speak on their behalf. Sixty percent of the abusers are family members, who isolate and intimidate their victims. The faces of the victims I described earlier have the same face as your grandmother, grandfather, and other family members and loved ones. If you weren't available to protect and help them if they were being abused, neglected or exploited, it's Adult Protective Services who would be called.

- The very limited funds that are available through the Older Americans Act (4.7 million dollars) are used primarily for elder abuse prevention and education, not investigation and intervention services. In other words, Older Americans Act funds are not used to support APS services in the states. Nor does this program address the needs of thousands of younger disabled persons those under the age of 60 who are also victims of abuse, exploitation and neglect. We often find that abuse has occurred for many years and not just after someone turns age 60 or 65.

- Last year the U.S. Department of Health and Human Services reported expenditures of 4 billion dollars used to serve abused children. The Violence Against Women's Act received approximately $200 million. Of the federal funding available for victims of abuse, 93.3% goes to child abuse, 6.7% to domestic violence, and only .08% to elder abuse. There are no other federal funds available to provide these life-saving services. Child Protective Services,

domestic violence agencies and related services need this level of commitment but the contrast with the funding availability for APS is indeed stark and troubling; especially in light of the fact that our nation is growing older.

- NAAPSA has made a number of recommendations, some of these include:

    1. Restore SSBG funding to $2.38 billion;
    2. Earmark SSBG funds for protective services including Adult Protective Services;
    3. Develop consistent definitions of abuse, neglect and exploitation;
    4. Provide seed money for an automated data collection system to develop national statistics, similar to the seed money provided to Child Protective Services;
    5. Develop model enabling legislation for Adult Protective Services to combat the abuse of our elderly and persons with disabilities; there currently exists tremendous inconsistency among states resulting in unequal protection under the law;
    6. Provide funding for research efforts;
    7. Encourage model programs and community partnerships; and
    8. Quantify the link between financial exploitation and the resulting high costs to public problems like Medicaid; sadly the personal devastation is known.

➧ Adults served by Adult Protective Services programs are among this country's most vulnerable citizens. Most of these victims are unable to ask for our help. Our current generation of older victims have raised their families, made numerous sacrifices, endured hardships and have done so much for America and others throughout the world. Now too many of them are being abused and neglected and deserve our immediate attention. They need our help, they deserve your attention, and they have earned the right to be safe in their older years. The true measure of our society will be how we treat those who have spent their lives doing for others.

Thank you.

Senator CRAIG. Ricker, thank you. Both you and Sara mentioned the importance of the block grant and the flow of money out of that to these kinds of protective services and educational programs, and our effort to restore that is underway. But it is my understanding that only 31 States use SSBG funding for elderly abuse prevention and adult protection efforts, and it seems to me that maybe we ought to place focus at the local level of encouraging States to review elder protection as a funding priority.

Either of you might respond to this if you would. If States are not using SSBG funding to assist elder abuse prevention, why not? Why aren't they in some instances?

Ms. ARAVANIS. Thank you, Senator, for that question.

I know that many States come through with their own State and local resources in order to fund adult protective services as well.

I think the other part of that dilemma is that it is a limited pot; there are many draws against that pot, and there are many priorities that are kind of bumping elder abuse and adult protective services out of the way.

It is always a challenge to try to spread that limited resource across all the needs, and it is very difficult for us in the elder abuse arena to say take money from child protective and give it to adult protective. It is a very difficult thing to do. But it is just clear that there are inequities in the extent to which this resource is available for elder abuse.

Senator CRAIG. Any additional comments on that?

Mr. HAMILTON. I think it is crucial that elder abuse victims and younger persons with disabilities who are being abused, neglected, or exploited be identified as a priority group. Whether we are talking about domestic violence funding, where the shelter system is set up for younger women and children, APS programs get older victims of domestic violence. We need to identify that older victims deserve the same attention and deserve the same response from our State, local and Federal level that child abuse victims, younger women and children in domestic violence, and in fact in some cases, elder abuse victims have less as far as resources, less as far as laws and regulations, than some of the humane laws to protect our animals.

Senator CRAIG. Thank you.

Joanne, a very special thanks to you for being here today and sharing with us your tragic experience—and it is certainly that. I hope that the prosecution of it proceeds to your benefit.

Can you tell us about adult protective services' response to the allegations that you were being abused and exploited?

Ms. HOPPER. When I called them, they came immediately. They also called the police, and there was a police report made. It has been handed over to the prosecuting attorney, but so far, nothing has been done. I am sure it is going to be a misdemeanor.

Senator CRAIG. And you think it will be a misdemeanor in spite of the fact that it nearly wiped out your finances?

Ms. HOPPER. Completely, totally—like $200,000.

Senator CRAIG. Maybe it was you, Ricker, or possibly you, Paul, who mentioned that at the bank level, there needs to be greater accounting and relationship understood between the bank and the

person bearing the power of attorney and a cross-referencing. Was it you, Paul, who mentioned that?

Mr. GREENWOOD. Yes. I feel very strongly about that.

Senator CRAIG. And here, we have an example of that, it appears, where the son was given power of attorney, and no questions were asked until the resources were depleted.

Mr. GREENWOOD. That is correct. And that is exactly what I am finding, Senator. In fact, I prosecuted a case 4 months ago where a 24-year-old limousine driver picked up an elderly woman with severe dementia from her nursing home and got her to sign a certificate of deposit surrender form for $93,000. He wheeled her into her bank, he presented it to the bank teller, and the bank gave a cashier's check for $92,000 to this stranger without asking questions.

Senator, in a neighboring State of yours, Oregon, they have done a phenomenal job of a bank reporting project. I would love to see funds from the Department of Justice to be transferred possibly to the Office of the Victims of Crime or somewhere, so that we can replicate this great Oregon project all over the country, because if they had had somebody trained in that bank, Joanne's money might still be safe today. So I think you have hit upon a very, very important point.

Senator CRAIG. Thank you.

Laura, in your view, how can national efforts best assist in promoting the inclusion of the medical profession in the assessment, investigation, and prosecution of elder crime?

Dr. MOSQUEDA. Well, physicians are scientists, so we always want to know what the data show. Unfortunately, there have been very few well-done scientific studies, and it has been a struggle as we have been creating training programs for health care providers to try to find primary data to explain the issues and explain what we ought to do about the issues to our fellow health care providers.

So I think we need to have a better understanding of the issue to begin with at a fundamental level. And then, I think there needs to be the promotion of the need to be aware of the problem and what to do about the problem.

For health care professionals, just as an example, we recently put on a 1½ day training course for geriatricians on the topic of elder abuse, funded by the California Office of Criminal Justice Planning, through a program called California Medical Training Centers. The purpose of this is to train physicians to be more helpful to folks like Mr. Greenwood who want to then prosecute these cases. We sent a mailing to over 600 geriatricians in California, and we put it on for free, we offered continuing medical education credits, and we had 16 practicing physicians come.

So it is a struggle to make health care providers aware of the problem; and then we have the next obligation, to make them aware and provide the training. But it is a struggle.

Senator CRAIG. It appears to me today, or at least, we are told, and all reference to it seems to be accurate, that with physicians who treat a child who appears to be abused, there tends to now be an immediate report, or questions are asked immediately, and authorities are brought in to examine. That has come over a period

of time of causing general awareness, but also clearly understanding that that physician has a responsibility to report.

That appears not to be the case with the elderly. How do we cause physicians to be as sensitive—through educational programs, or does there need to be more specificity in the law as to a responsibility and a requirement to report?

Dr. MOSQUEDA. Well, of course, the laws are different in different States, but in most States, there is a mandated reporting law for elder abuse, and physicians are always mandated reporters.

As far as I know, there have not been any prosecutions of physicians for not reporting; I do not know if there will need to be carrots and sticks. But I think that at a more basic level, physicians are just missing it. We do not have any data to help us understand how to distinguish a bruise or a pressure sore or other signs of injury—a fracture, for example—well, the person has osteoporosis, and they fracture easily.

So we need to train physicians to start thinking about how to ask questions and what questions to ask about this. So from my perspective, I think it lies in research and education and making it easy for physicians to report—creating forensic centers, for example, as they have done in child abuse, so that a physician who is in a busy practice does not feel like, hey, if I identify this case of abuse, that is going to be my whole afternoon—if they could have an easy way to turn it over to somebody who could help them with documentation and investigation.

Senator CRAIG. I apologize that I am running out of time because there are several other things that I would like to ask you. What we may ask of you is that we be able to submit some questions in writing for your response.

But Paul, offer me some advice from your experience. You talk about "vertical units." What are your best recommendations—you have already given some—for other States and counties that may want to start their own multiple disciplinary teams and other prosecuting attorneys' offices that may want to establish an internal elder crime unit.

Mr. GREENWOOD. I would try to send out the message to all elected prosecutors that one of their primary responsibilities right now is to make sure that they are taking care of their elder population and to get the backing of their local boards of supervisors in their counties to be on board with this, and to assign a prosecutor who believes in the work, is dedicated to it, and basically fulfills a role outside the courtroom as well as inside the courtroom, which I think is for adult protective services to begin outreach, education and training.

I do believe that local prosecutors have a unique responsibility and opportunity in this country to be able to fulfill that, but it takes the vision of an elected prosecutor. Five and a half years ago, it was my boss, Paul Pfingst, who saw the need, and he allowed me the freedom to develop it in the way that I have seen fit. But you need more Paul Pfingsts out there who see that we have got to have this as a primary resource in every office.

When I go around the country, Senator, and I talk to elected prosecutors, their first response is, "Oh, we do not have the money in the budget." And then I follow up with a question: "Do you pros-

ecute misdemeanor DUIs?" And they say, "Of course, we do." And I ask, "What would happen if, tomorrow, you went on television and said we cannot prosecute misdemeanor DUIs because of lack of funding?" And they say, "We would have Mothers Against Drunk Driving at our door." I say absolutely—but equally, as my colleague here so succinctly put it, we owe seniors because of what they have done for us. We owe them our primary duty to take care of them. And I think elected prosecutors in this country need to capture that vision today.

Senator CRAIG. I wish we could continue this discussion, but I cannot, and I apologize. But certainly on behalf of Chairman Breaux and myself and the members of the committee, we thank all of you for your time, but most important, we thank you for your commitment and your willingness to become advocates and speak out. That is clearly a part of the whole process of educating and understanding.

I am committed, and I think the chairman is, to working with the Department of Justice to see if we cannot cause a bit of a different allocation of resources—and my guess is that we can—that will allow us to begin to reach out to States and to counties, both in the informational and educational perspectives, but also the possibility of actually gaining some resources to train and employ people for the purpose of advocacy and/or obviously the kind of training that you have all spoken to.

Thank you all very, very much for coming today. We do appreciate it.

The committee will stand adjourned.

[Whereupon, at 11:26 a.m., the committee was adjourned.]

APPENDIX

"Saving Our Seniors: Preventing Elder Abuse, Neglect and Exploitation"
A Hearing by the Senate Special Committee on Aging

June 14, 2001

Statement by the National Indian Council on Aging

10501 Montgomery Blvd., NE
Albuquerque, NM 87111
505/292-2001
Dave Baldridge, Executive Director

Title VII of the Older Americans Act, "Vulnerable Elder Rights Protection," was created in 1992. It includes Part B, and has historically authorized $5 million for Indian tribes to initiate elder protection programs. Nine years after its inception, however, this badly-needed initiative remains unfunded by Congress.

Subtitle B was intended to assist Indian tribes in prioritizing elder rights issues and carrying out elder rights protection activities. With deteriorating economic and social conditions in much of Indian country, elder abuse is on the rise. Prevention programs for tribes are desperately needed, yet no funds have ever been provided. State programs currently receive $4.5 million for ombudsman services and $4.7 million for prevention of elder abuse programs. However, these programs seldom, if ever, reach Indian country. NICOA requests that $5 million be appropriated in FY2001 specifically for tribal programs under Subtitle B.

The 1997 Department of Justice Report to the Attorney General on Indian Country Law Enforcement noted that a wave of violent crime is overwhelming the Indian criminal justice system.

- Law enforcement in Indian country often fails to meet basic public safety needs.

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- Serious and violent crime is rising significantly in Indian country–in sharp contrast to national trends.
- The fragmented criminal justice system results in poor coordination.
- The most glaring problem is one of inadequate resources.
- The homicide rate for Indian males is almost three times higher than the rate for White males. In 1996 the Navajo Nation's homicide rate would have placed it among the nation's top-20 most violent cities.
- Bureau of Indian Affairs law enforcement resources have actually been reduced in Indian country during the last few years.
- In communities under 10,000 citizens, 1996 statistics show 2.9 officers per 1,000 citizens in non-Indian communities vs. 1.3 officers in Indian country--less than half the per capita coverage.
- Chronic unemployment, low levels of educational attainment, geographic displacement, and family disruption foster the rise in juvenile crime.

As the Indian criminal justice system attempts to cope with these overwhelming obstacles, it is ill prepared to deal with the more subtle, less visible crimes of elder neglect, financial and physical abuse that take a toll on reservation elders. Rurally and culturally isolated from mainstream programs offering respite, counseling, and other state services, Indian families often find themselves under exceptional stress. State services do not reach them.

Because very few established long-term care services exist in Indian communities (only 12 known tribal nursing homes in the entire nation), the burden of long-term care falls heavily on Indian families. Studies show that up to 90 percent of reservation long-term care is provided by families. Many of these family members report extraordinary levels of stress.

Future in-home care burdens--perhaps leading to increased abuse--will be dramatically complicated by the epidemic of diabetes that now pervades Indian country. Indian elders are living longer, but they are also bringing huge burdens for their caregivers. Indian caregivers now must deal with daily diabetes management--the shots and dietary restrictions--as well as the emputations, blindness and kidney dialysis that diabetes brings.

Nationally, more than two of every five elders has the disease and many Indian communities report that more than half their seniors are afflicted. We perceive that diabetes means greater caregiver burden, and that this burden will increase elder abuse.

We are grateful for ongoing federal initiatives designed to reduce the disparities in Indian health care, such as the Indian country diabetes program. They are providing us with opporuntities to improve our elders' lives. At the same time, we request that you not overlook some basic protections, such as the one afforded by Part B of Title VII, that are available to most of the nation but still haven't reached Indian elders.

The National Indian Council on Aging thanks you for this opportunity to comment on this important issue.

-END-

SPECIAL COMMITTEE ON AGING

UNITED STATES SENATE

THURSDAY, JUNE 14, 2001

SAVING OUR SENIORS: PREVENTING ELDER ABUSE,

NEGLECT AND EXPLOITATION

TESTIMONY BY THE SOCIAL SERVICES BLOCK GRANT COALITION ON THE ROLE OF SSBG IN ADDRESSING ELDER ABUSE

The Social Services Block Grant Coalition: c/o Kathryn Dyjak, American Public Human Services Association 202-682-0100,
John Sciamanna, Child Welfare League of America, 202-942-0256

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Chairman Breaux, as representatives of the Coalition on the Social Services Block Grant (SSBG) we are pleased to submit this testimony on the role of the Social Services Block Grant in the prevention of elder abuse and neglect. We are pleased that the Special Committee on Aging is holding a hearing on a growing problem that is of vital concern to all citizens.

As witnesses and as the committee has indicated in its press release, the problem of elder abuse is a serious one. Like many forms of abuse and neglect it is a sometimes-invisible problem and as a result strategies to address it are often under-funded.

According to the National Elder Abuse Incidence Study (1998), more than 550,000 people age 60 and older experienced abuse, neglect, and/or self-neglect in a 1-year period. Reports to adult protective services (APS) agencies of domestic elder abuse increased 150 percent between 1986 and 1996. This increase dramatically exceeded the 10- percent increase in the older population over the same period. This study also finds that only one in four cases of elder abuse are reported to authorities. APS clients are among the most vulnerable of populations, unable to protect themselves from abuse and harm due to the extent of their disabilities, dementia and other limiting conditions.

The Role of SSBG Funds in Adult Protective Services

The SSBG Coalition is submitting testimony to highlight the fact that this Block Grant, Title XX of the Social Security Act is by far, the largest source of federal funding being used to address elder abuse and neglect. Unfortunately this highly relied upon source of funds has been severely cut over the past five years, jeopardizing support for thousands of elderly individuals.

The latest data collected from the reports submitted by states for federal fiscal year 1999 indicates just how vital a role this block grant plays in funding state and local programs to address elder abuse and neglect.

For instance, 33 States used over $111 million in SSBG funds for adult protective services. In funding these services a total of approximately 651,000 adults received services that were funded in whole or in part with SSBG funds. In 1998 this represented 3 percent of all SSBG expenditures. In particular, there are several states whose reliance on SSBG is even more pronounced. For example, 7 states spent 10 percent or more of their SSBG funds on adult protective services and 2 states, New Mexico and the District of Columbia, spent 20 percent or more. Five States spent more than $5 million of SSBG funds on adult protective services and 2 States, Ohio and Texas, spent more than $10 million.

A United Way of America survey finds that diminishing SSBG funds force adult protective service agencies throughout the country to make impossible choices on who to help, and who to leave behind. Two examples from the survey highlight this case. Cuts to SSBG forced a 50 percent decrease in the number of "neglected and exploited disabled and elder adults" served by the Utah State Adult Protective Services, from 158 in 1996 to just 76 in 2000. DuPage County Metropolitan Family Services of Wheaton, Illinois uses SSBG funding to support seniors who are homeless or are victims of elder abuse who are unable to stay in their homes or the homes of their caregivers. This program is the only one in the county that can provide for the unique physical and emotional needs of older individuals. Over the last five years, as need has increased, SSBG funding to the agency has remained stagnant.

The component services or activities that are covered by states may include: investigation; immediate intervention; emergency medical services; emergency shelter; case plan development; initiation of legal action (if needed); counseling for the individual and the family; assessment/evaluation of family circumstances; alternative or improved living arrangements; assistance in obtaining benefits, such as Medicare, Medicaid, or private health insurance; and case management and referral to service providers.

It is important to note that the $111 million in funds spent on protective services and elder abuse through the Social Services Block Grant far exceeds the $4.73 million appropriated through Title VII (Elder Abuse) of the Older Americans Act. It is also worth noting that many other SSBG services, such as legal support, adult day care, and home delivered meals often play a role in states efforts to address elder abuse but the funding for those programs are not included in the figures we cite.

Recent Congressional History of SSBG

We are here not only to highlight the significance of SSBG and its role in addressing this national challenge but we are here to highlight the fact that this vital source of funding is under severe budget pressure.

The Social Services Block Grant was enacted in 1981 when federal matching funds for social services and funding for social service staff training were combined into a block grant to states. These changes were part of the Omnibus Budget Reconciliation Act, PL 97-35 (OBRA). Before 1981 these federal matching funds covered a range of human services including programs for families on AFDC, services to keep elderly adults and children out of institutions and a range of community-based programs. The 1981 act capped funding, increased state flexibility and converted SSBG into a mandatory fund. Funding

was set at $2.4 billion in 1982. In 1985 it was increased to $2.7 billion, a level it stayed at or near for most of the next decade until 1996.

With the passage of the welfare reform act in 1996 (PL 104-193), SSBG was changed in several ways. Funding was lowered to $2.38 billion in fiscal year 1996 through 2002. In 2003, funding was to increase back to the $2.8 billion level. PL 104-193 also allowed states to transfer up to 10 percent of their TANF block grant into SSBG. The transferred funds must be spent on children or their families whose income is at or below 200 percent of the federal poverty level. It is vital that the Committee understands this provision. Some have argued that because states have TANF funds they can transfer some of the TANF block grant funds into SSBG to make up for any reductions. The law however makes clear that these funds can only be spent on children and their families at 200 percent of poverty or below, which excludes most elderly and disabled persons.

Despite the fact that SSBG had been cut in the 1996 and had contributed significant amounts to welfare reform's budget savings, and despite the mandatory nature of SSBG funding, it became vulnerable to the annual decisions of appropriators. For 1998 SSBG was cut to $2.299 billion. The following year SSBG funding was used as an offset in the Transportation Equity Act for the 21st Century"—the transportation reauthorization. The cuts were to be $1.9 and eventually $1.7 billion. That legislation not only reduced SSBG funding

to $1.7 billion in 2001 and beyond but states were limited in their ability to transfer TANF funds into SSBG to no more than 4.25 percent of their TANF grant.

We hope this Committee will use this opportunity to bring to the attention of those advocating for a more aggressive national strategy to address elder abuse and to bring to the attention of all members of Congress the important role that SSBG does play in addressing this challenge. By some estimates over sixty percent of funding to address elder abuse is provided by state and local governments. The reliance on over one hundred million in SSBG funds demonstrates an increasing need for further resources. Restoring funding to SSBG would be an important action towards this goal as well as a signal by Congress that they are willing to address this problem at a national level. While recognizing SSBG's role as part of that solution everyone must be warned that it's future is under great threat. We hope that the Senate Select Committee on Aging will highlight the need to restore funding to SSBG.

Already some members of Congress have recognized this need through the introduction of legislation that would restore SSBG to $2.38 billion this year. Senate Bill S. 501 introduced by Senator Bob Graham of Florida and cosponsored by Special Committee Chairman Breaux, Committee members Jeffords, Lincoln, Collins, Kohl, Hutchinson and Carnahan would help address

some of the funding needs that the tragedy of elder abuse calls out for.

We urge the Committee to continue its work in this area and to highlight to both Houses of Congress how significant and tragic elder abuse is. We also hope that this Committee will recognize as part of that strategy the restoration of funding to Title XX of the Social Security Act, the Social Services Block Grant.

The Social Services Block Grant Coalition

(For further information and a list of nearly 300 national, state and local organizations that have signed onto our letter of support for SSBG please contact the chairpersons listed on the cover page)

Defending Liberty
Pursuing Justice

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July 17, 2001

The Honorable John Breaux, Chair
Special Committee on Aging
United States Senate
Washington, DC 20510

Dear Mr. Chair:

On behalf of the American Bar Association, I am writing to thank you for holding the June 14th hearing, "Saving Our Seniors: Preventing Elder Abuse, Neglect and Exploitation." The hearing was timely and many important ideas were raised. One of those ideas, a curriculum to educate judges about elder abuse, has already been developed by the American Bar Association. Nonetheless, there is much more that could be done to maximize its use and keep it current with the ever-growing understanding of the problem of elder abuse. We urge you and your committee to focus attention on the need to provide funding for educating judicial personnel about elder abuse.

In 1993, the American Bar Association Commission on Legal Problems of the Elderly (ABA Commission) received a grant from the State Justice Institute to conduct a research project and develop recommendations for state courts handling cases involving elder abuse. ABA Commission staff established a baseline of knowledge by examining existing practices and procedures through analysis of pertinent civil and criminal states, research of case law, and review of the legal and social science literature. At the same time, using the Delphi research methodology and a series of nine focus groups, the project developed a vision for the future by tapping the expertise of approximately three hundred professionals: judges, court administrators, lawyers, prosecutors and attorneys general, adult protective services administrators and workers, aging and social services providers, law enforcement officers, health care providers, researchers and academicians, and others. Twenty-nine recommendations were developed and published in *Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse* (ABA, 1995). In 1996, the ABA House of Delegates adopted the recommendations as policy and urged their implementation at the state, territorial, and local levels. It also adopted policy supporting efforts to improve the response of the state courts to elder abuse. Those recommendations are attached.

With additional funding from the State Justice Institute in 1996, the ABA Commission collaborated with the National Association of Women Judges to develop, test, publish, and disseminate three curricula on elder abuse for judges and court staff. The curricula were disseminated widely to leaders in judicial education, family violence, and elder abuse.

During the project, the curricula were pilot tested in Tennessee and Illinois. Since then, they have been used in judicial education programs in Washington, Florida, Ohio, Wisconsin, Georgia, and at the National Association of Women Judges annual conference.

Prosecutors, Medicaid Fraud Control Unit directors, and providers of adult protective services and aging services in numerous other states and communities have expressed interest in implementing the ABA curricula, but there are substantial obstacles to doing so.

- Judges may believe that they are not hearing many elder abuse cases or that it is a social or family problem, and thus elect not to devote limited time and resources to learning about the issue. The reality, however, is that elder abuse is an underlying and often unrecognized issue in many cases that they are hearing, and it is no less a legal problem than child abuse or domestic violence. Moreover, the number of cases involving elder abuse is growing as the aging population swells; reports of elder abuse increase significantly; state statutory changes promote a legalistic response to elder abuse; and prosecutors, law enforcement officers, and civil lawyers undergo training on the issue.
- There is a lack of funding for educating judges about elder abuse. There is no funding for updating and expanding the ABA Commission's curricula to address newly recognized problems, such as undue influence.
- The judicial education field is quite insular and advocates for elder abuse victims have difficulty influencing it.

These same obstacles faced the child abuse and domestic violence fields in recent years. Congress has attempted to address those problems through legislation authorizing and appropriating funding for training judicial personnel on those issues. Millions of federal dollars are used for training judges on child welfare issues including child abuse. And just last year, the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) authorized $2.3 million for training judicial personnel and practitioners about child abuse, $1.5 million for training state judicial personnel about violence against women, and $0.5 million for development of a training program for federal judicial personnel about violence against women. Victims of elder abuse are no different than victims of child abuse, domestic violence, or sexual assault in their need for educated judges and court personnel.

The ABA supports efforts to improve the response of the state courts to elder abuse. The most important of the many potential court initiatives is educating judicial personnel about the problem. We would appreciate it if you would include this letter in the record of your June 14th hearing.

Thank you for your consideration.

Sincerely,

Robert D Evans

Robert D. Evans

cc: Members, Special Committee on Aging

RECOMMENDED GUIDELINES FOR STATE COURTS HANDLING CASES INVOLVING ELDER ABUSE

Ways In Which the State Courts Can Improve Their Handling of Cases Involving Elder Abuse

A. Training of Judges and Other Court Personnel

Recommendation 1. Judges should receive training about elder abuse.

a. Topics should include:
   i. Dynamics of elder abuse and family violence;
   ii. Types of cases involving elder abuse;
   iii. Capacity issues;
   iv. State laws concerning elder abuse;
   v. Adult Protective Services (APS) system and Aging Services;
   vi. Case management issues and procedural innovations; and
   vii. Crafting effective orders in elder abuse cases.

b. Training should be designed and presented with the input and involvement of advocates, APS, prosecutors, law enforcement, aging services providers and should include coverage of their roles and resources.

Recommendation 2. Court staff should receive training about elder abuse.

a. Topics should include:
   i. Dynamics of elder abuse and family violence;
   ii. Types of cases involving elder abuse;
   iii. Capacity issues;
   iv. Adult Protective Services system;
   v. Aging Network and other Social Services;
   vi. Case management issues and procedural innovations; and
   vii. Data collection about elder abuse cases.

b. Training should be designed and presented with the input and involvement of advocates, APS, prosecutors, law enforcement, aging services providers and should include coverage of their roles and resources.

B. Training of Other Relevant Professionals

Recommendation 3. Courts should ensure that prosecutors, investigators, lawyers, law enforcement officers, adult protective services workers, social workers, bank and financial institution officials, health care providers, and any other professionals appearing before them in cases involving elder abuse are familiar with the dynamics and issues of elder abuse and with the role of the courts in addressing elder abuse. To achieve that objective, courts should encourage and support the development and implementation of cross-training for victim/witness programs, APS staff, aging services providers, lawyers, prosecutors, law enforcement, banking officials, health care providers, and any other relevant professionals about the resources and assistance offered by each of them to older abused persons and about the ways in which they need to coordinate those efforts.

C. Judicial Administration and Case Management

Recommendation 4. Courts should provide accommodations for persons with physical and mental deficiencies and, if necessary, hold hearings in cases involving elder abuse in the setting that best accommodates the needs of the abused older person.

Recommendation 5. Courts should recognize that the capacity of older persons may fluctuate with time of day, medications, etc. and should be flexible in scheduling hearings to accommodate those individual variations.

Recommendation 6. Courts should expedite cases involving elder abuse on the calendar.

D. Case Management Where the Older Person's Capacity is at Issue

Non-Criminal and Criminal Court

Recommendation 7. Courts should use expert witnesses, evaluators, guardians *ad litem*, court investigators, court visitors, or interdisciplinary teams who are trained and knowledgeable about the problems of older persons to assess the older person's capacity.

Recommendation 8. Courts should understand gradations of diminished capacity in order to more effectively manage and adjudicate cases involving elder abuse.

Recommendation 9. Courts should consider that incapacity could increase the likelihood of abuse and, if necessary, order a qualified evaluator to conduct an

unbiased assessment of the older person's capacity.

Non-Criminal Court

Recommendation 10. Courts should understand and use limited guardianship and other alternatives to guardianship appropriately.

Recommendation 11. When counsel for the older person is required to be appointed, or is otherwise appointed, the appointment should be at the earliest possible stage of the proceedings.

Criminal Court

Recommendation 12. Courts should allow prosecutors special latitude in questioning older abused persons and in offering additional witnesses and corroborating evidence.

Recommendation 13. Courts should ensure that plea agreements meet the needs of the older abused person, including protection from further abuse, and be willing to be creative in negotiations and sentencing, exploring the alternatives available to the older abused person.

E. Implementation of Procedural Innovations

Recommendation 14. Further analysis and study should be undertaken of the ramifications of courts more readily allowing an older abused person's testimony to be videotaped before capacity is lost or the individual dies.

Recommendation 15. Further analysis and study should be undertaken of the ramifications of courts taking steps when necessary to reduce the level of fear experienced by an older person who is testifying against his or her abuser such as allowing the hearing to be held in a less confrontational setting, allowing testimony and cross-examination of the older abused person by videotape or closed-circuit television, and closing the courtroom to the public.

Recommendation 16. Further analysis and study should be undertaken of the ramifications of courts more readily allowing admission of evidence from collateral sources if the older abused person's capacity is at issue, as has been done by the Department of Justice regarding child witnesses and child abuse cases.

F. Intra-Court Coordination

Recommendation 17. Courts must develop ways of ensuring that judges

become aware of cases involving older abused persons that might be underway simultaneously in different divisions or that might previously have been heard and have some influence on a current case.

Recommendation 18. Further study should be given to the concept of consolidation of the courts handling cases involving elder abuse, for example into a "family court."

G. Alternative Dispute Resolution

Recommendation 19. The use of alternative dispute resolution (ADR) in cases involving elder abuse is not recommended at this time. The possible use of ADR should be studied further.

II. Ways of Ensuring that Cases Involving Elder Abuse Enter the Court System

A. Training Guardians

Recommendation 20. Newly appointed guardians should receive training about their role and responsibilities as guardians, and about preventing, recognizing and reporting elder abuse.

B. Assistance from Victim/Witness Advocates and Court Staff

Recommendation 21. Victim/witness advocates should be available and involved in assisting older abused persons throughout the judicial process in both non-criminal and criminal court proceedings.

Recommendation 22. All victim/witness advocates should be trained about the dynamics of elder abuse and about the APS system and other aging network services available to assist older abused persons. Additionally, there should be an elder abuse specialist at every victim/witness program.

Recommendation 23. Especially if there are no victim/witness advocates available to help an older abused person, court staff should help explain and de-mystify the court process for older abused persons who may be intimidated or confused, or who may have some type of mental or cognitive disability.

III. Coordination of the State Judicial System with Other Community Resources

Recommendation 24. Courts should:

- encourage and support the development and continuing operation of a

state or local task force or coordinating council on elder abuse issues;

- lend their support to existing task forces or coordinating councils on elder abuse; or
- encourage evolving or existing task forces or coordinating councils on family violence or domestic violence to incorporate elder abuse advocates into their membership and elder abuse issues into their agenda.

Task force or coordinating council members should include judges and court personnel, representatives of the Attorney General, representatives of the Medicaid Fraud Control Unit, public and private lawyers, law enforcement officers, APS administrators or workers, social services providers, health care providers, banking and financial institution officials, victim/witness advocates, representatives of the long term care ombudsman program, and other relevant professionals. In addition to addressing systemic problems faced by the courts and the council members in preventing and responding to elder abuse, these task forces or coordinating councils should develop materials that explain their roles and their relationships to each other and the court system, and disseminate those materials to each other, the courts, and the public.

Recommendation 25. Courts should include APS and aging services on court advisory councils or develop other mechanisms for establishing linkages with those organizations and others that address elder abuse.

Recommendation 26. Courts should encourage and support the development and continued operation of multidisciplinary teams on elder abuse.

Recommendation 27. Courts should encourage and support the development of protocols or memoranda of understanding between various entities involved in elder abuse cases as to their roles and relationships.

Recommendation 28. Judges and court personnel should have familiarity with APS, aging, and social services providers in their community or brochures or other materials from those agencies so that they can direct an older abused person to appropriate service providers.

Recommendation 29. Courts should encourage and support the development of a "court social worker" or "court ombudsman" program using trained volunteers to help older, disabled, incapacitated or other individuals by giving them information about social services and other community organizations; linking, rather than just referring, them to social services and other community organizations; assisting them with the completion of *pro se* documents; and helping them to understand the nature of the court process.

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